BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.11419 of 2015
and
M.P.(MD)No.1 of 2015

Tvl.Andavar Packaging,
Represented by its Partner Thiru R.Kaliraj,
No.1082-A/1, Pallapati Road,
Sivakasi 626 130,
Virudhunagar District. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai-600 005.

2.S.Radha Lakshmi
The Deputy Commercial Tax Officer-11,
Enforcement Wing, Group No.11,
C.T.Building, Satchayapuram.
Sivakasi, Virudhunagar District.

3.Assistant Commissioner (C.T)-3,
C.T.Building, Satchayapuram,
Sivakasi, Virudhunagar District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to Pre Revision Notice in TIN 33046002769/2012-13, dated 08.06.2015 received by the petitioner on 10.06.2015 quash the same and to direct the second respondent to refund the advance tax of Rs.50,000/- collected from the petitioner during the course of survey.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant writ petition has been filed challenging the pre revision notice dated 08.06.2015 issued by the respondent under Section 27(1)(a) read with Section 27(3)(c) of the TNVAT Act, 2006 for the assessment year 2012-13.

2.It is the case of the petitioner that they are a registered dealer under TNVAT Act, 2006. According to the petitioner, at the time of inspection by the Enforcement Wing Officials of the respondent, they have illegally collected a sum of Rs.50,000/- as advance tax from the petitioner. Therefore, the impugned pre revision notice has been issued without authority under law.

3.Under such circumstances, this writ petition has been filed challenging the impugned pre revision notice and also to direct the second respondent to refund the advance tax of Rs.50,000/- collected from the petitioner during the course of survey of the business premises of the petitioner.

4.Heard Mr.A.S.Mujibur Rahman, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents.

5.The impugned pre revision notice has been issued by the respondents under Section 27(1)(a) r/w Section 27(3)(c) of the TAVAT Act, 2006 for the alleged sales suppression committed by the petitioner. Under the impugned pre revision notice, the third respondent has proposed to revise the assessment for the assessment year 2012-13. According to the third respondent, for the sales suppression, the petitioner is liable to pay Rs.4,12,275/- as tax.

6.Admittedly, no reply was sent by the petitioner to the impugned pre revision notice dated 08.06.2015. Even before sending any reply, the petitioner has approached this Court under Article 226 of the Constitution of India challenging the said notice on the ground that it has been issued without authority under law.

7.The main ground for challenge raised by the petitioner is that the Enforcement Wing Officials of the respondent ought not to have collected a sum of Rs.50,000/- from the petitioner before passing the assessment order. They inspected the premises of the petitioner and collected advance tax even before assessment order was passed in the revision of assessment proceedings.

8.The learned counsel appearing for the petitioner drew the attention of this Court to the Hon'ble Division Bench judgment of this Court dated 26.02.2018 in W.A.(MD)No.136 of 2018 in the case of ***TVL.Famous Tiles Park Vs. The Commissioner of Commercial Taxes*** and in particular, he referred to Paragraph No.5 of the said judgment which reads as follows:-

> *"5.The settled legal position is that the officials of the Enforcement Wing and the Audit Department are not entitled to collect tax during the course of audit, as if it is a payment towards advance tax and the Enforcement Official is to make necessary proposals to the*

Assessing Officer of the concerned dealer to enable them to take action in accordance with law."

9. The learned counsel relying upon the said judgment would contend that the collection of Rs.50,000/- by the respondents through the Enforcement Wing Officials during the inspection of the petitioner's premises, is illegal and it has to be refunded to the petitioner. Therefore, the impugned pre revision notice is also bad in law and has to be quashed.

10.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the impugned notice is only a pre revision notice and is in the nature of a show cause notice. Therefore, the writ petition is not maintainable.

11.According to the learned Additional Government Pleader, without filling their objections to the pre revision notice and before passing of the assessment order, the petitioner has approached this Court prematurely.

12.According to the learned Additional Government Pleader, the third respondent is willing to consider all the objections raised by the petitioner as and when the petitioner files their objections to the impugned pre revision notice and shall pass final assessment orders in accordance with law.

13.The impugned pre revision notice has been issued by the third respondent under Section 27(1)(a) read with Section 27(3)(1) of the TAVAT Act, 2006 called upon the petitioner to show cause as to why a sum of Rs.4,12,275/- should not be paid by him towards suppression of sales for the assessment year 2012-2013.

14.According to the petitioner, a sum of Rs.50,000/- was collected unlawfully from the petitioner while the Enforcement Wing Officials of the third respondent inspected the petitioner's premises.

15.It is now settled law as per the Judgment of the Hon'ble Division Bench of this Court, dated 26.02.2018 which was relied upon by the learned counsel for the petitioner that the officials of the Enforcement Wing and the Audit Department are not entitled to collect tax during the course of audit, as if it is a payment towards advance tax and the Enforcement Wing Official is to make necessary proposals to the Assessing Officer of the concerned dealer to enable them to take action in accordance with law.

16.In the instant case, the Enforcement Wing Officials have collected the advance tax during the time of inspection itself, even before the show cause notice was issued to the petitioner for revision of assessment proceedings. But that cannot be a ground for quashing the impugned pre revision notice as the pre revision notice calls upon the petitioner to pay a sum of Rs.4,12,275/-

which is in excess to the sum of Rs.50,000/- which was collected by the Enforcement Wing Officials of the respondents from the petitioner during the time of inspection.

17.It is settled law that the show cause notice cannot be challenged under Article 226 of the Constitution of India unless and until, the same has been issued without authority under law or without jurisdiction.

18.In the case on hand, the respondents has got the power to issue notice under Section 27 of the TNVAT Act, 2006 for revision of assessment proceedings. Therefore, the petitioner has not satisfied any of the grounds required for quashing of the pre revision notice under Section 27 of the TNVAT Act, 2006. However, considering the fact that the respondents have collected a sum of Rs.50,000/- from the petitioner as advance tax at the time of inspection of the petitioner's premises, which they are not legally entitled to, the said amount will have to be adjusted as and when the final assessment order is passed. Further, the petitioner must be given an opportunity to raise all objections available to them under law including, granting them the right of personal hearing. Since the petitioner has not filed any written objections to the impugned pre revision notice, they should also be granted opportunity to file written objections.

19.In the result, there is no merit in this writ petition. However, the third respondent shall permit the petitioner to file the written objections to the impugned pre revision notice dated 08.06.2015 and the second respondent shall pass final orders after giving sufficient opportunity to the petitioner to raise all objections available to them under law including granting them the right of personal hearing within a period of eight weeks from the date of receipt of a copy of the written objections for the pre revision notice from the petitioner. While passing the final orders, the second respondent shall consider the Hon'ble Division Bench Judgment of this Court, dated 26.02.2018 in W.A.(MD)No.136 of 2018 in the case of ***TVL.Famous Tiles Park Vs. The Commissioner of Commercial Taxes.***

20. With the aforesaid direction, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai-600 005.

2.S.Radha Lakshmi
The Deputy Commercial Tax Officer-11,
Enforcement Wing, Group No.11,
C.T.Building, Satchayapuram.

3.Assistant Commissioner (C.T)-3,
C.T.Building, Satchayapuram,
Sivakasi, Virudhunagar District.

+1CC TO MR.A.S.MUJIBUR RAHMAN, Advocate Sr. No. 57338
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 57371

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and
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