BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **31.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)Nos.557, 611 to 614, 647 to 653, 666 and 667 of 2019
and
C.M.P(MD)Nos. 5488 to 5494, 5715 & 5716 of 2019
against
WP(MD)Nos.14544 OF 2015, 307 TO 310 OF 2016, 11425, 11426 OF 2015

1. M/s.J.K.Traders,
Represented by its Partner S.Chidambarakani,
No.6, Puthu Amman Kovil Street,
Virudhunagar.
...Appellant/Writ Petitioner in WA(MD). 557/ 2019

2. M/s.O.K.T Madhu Traders,
Represented by its Proprietor Mr.T.Madhu,
Door No.W4/B7/281,
Annanji Road,
Theni 625531.
...Appellant/Writ Petitioner in WA(MD). Nos. 611/ 2019 to 614/2019

3. M/s.N.V.R & Co,
Represented by its Partner Mr.Vivekanandan,
No.4/441, Kulloorchandai Road,
Virudhunagar.
...Appellant/Writ Petitioner in WA(MD) Nos. 647/ 2019 & 648/2019

4. M/s.C.Marimuthu,
Represented by its Proprietor C.Marimuthu,
No.7/A, Patel Road,
Virudhunagar.
...Appellant/Writ Petitioner in WA(MD). Nos. 649/ 2019 to 653/2019

5. M/s.Vembar Enterprises,
Represented by its Partner Mr.S.Thangarajan,
No.175, Teppam North,
Virudhunagar.
...Appellant/Writ Petitioner in WA(MD). Nos.666/ 2019 & 667/2019

Vs. -

1. The Assistant Commissioner (CT),
   Virudhunagar-III Assessment Circle,
   Virudhunagar.
   ....1st Respondent in WA(MD). Nos. 557/ 2019 , 647/2019 and 648/2019.

2. The Assistant Commissioner (CT)-II,
   Virudhunagar-II Assessment Circle,
   Virudhunagar.
   ... 1st Respondent in WA(MD) Nos.649/2019 to 653/2019, 666/2019 and 667/2019

3. The Assistant Commissioner,
   Theni-I Assessment Circle,
   Theni. ... 1st Respondent in WA(MD) Nos.611/2019 to 614/2019

4. The Principal Secretary,
   The Commissioner of Commercial Taxes,
   Chepauk, Chennai. ...2nd Respondent in all Writ Appeal

Prayer in WA(MD) No. 557/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in W.P.(MD) No.14544 of 2015 dated 06.12.2018 and to allow the Writ Appeal.

Prayer in WA (MD) No. 611/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.307 of 2016 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No. 612/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.308 of 2016 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No. 613/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.309 of 2016 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No. 614/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.310 of 2016 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.647/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.11425 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.648/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.11426 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.649/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.12550 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.650/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.12551 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.651/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.12552 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.652/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.12553 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.653/2019:

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.12554 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.666/2019 :

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.11729 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WA (MD) No.667/2019 :

This Writ Appeal filed under Clause 15 of Letters Patent praying this Honourable Court to set aside the order passed in WP (MD) No.11730 of 2015 Dated:06/12/2018 and allow the Writ Appeal.

Prayer in WP(MD). 14544/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st Respondent in TIN No. 33315760072/2013-14 and quash the proceedings dated 05.08.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 307/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No.33795121839/2010-2011/CST NO.156040/2010-2011 dated 28.09.2015 and quash the same in so far as the levy of purchase tax and penalty under Section 12(1) (C)& Section 27(3) of the TNVAT Act respectively as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 308/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No.33795121839/2011-2012/CST No.156040/2011-2012 dated 28.09.2015 and quash the same in so far as the levy of purchase tax and penalty under Section 12(1) (C) & Section 27(3) of the TNVAT Act respectively as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 309/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No.33795121839/2012-2013/CST NO.156040/2012-2013 dated 21.09.2015 and quash the same in so far as the levy of purchase tax and penalty under section 12(1) (C) & Section 27(3) of the TNVAT Act respectively as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 310/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No.33795121839/2013-2014/CST NO.156040/2013-2014 dated 21.09.2015 and quash the same in so far as the levy of purchase tax and penalty under Section 12(1) (C) & section 27(3) of the TNVAT Act respectively as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 11425/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st Respondent in TIN No. 33525762818/2013-2014 and quash the proceedings dated 13.06.2015 in so far as the levy of purchase tax under Section 12(1)(C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 11426/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN No. 33525762818/2014-2015 and quash the proceedings dated 13.6.15 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 12550/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN NO. 33815740300/2010-2011 and quash the proceedings dated 16.06.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act and pass such further or other orders.

Prayer in WP(MD). 12551/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st respondent in TIN No. 33815740300/2011-12 and quash the proceedings dated 16.06.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 12552/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN NO. 33815740300/2012-2013 and quash the proceedings dated 16.06.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act and pass such further or other orders.

Prayer in WP(MD). 12553/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN NO. 33815740300/2013-2014 and quash the proceedings dated 16.06.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act and pass such further or other orders.

Prayer in WP(MD). 12554/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 1st respondent in TIN NO. 33815740300/2014-2015 and quash the proceedings dated 16.06.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act and pass such further or other orders.

Prayer in WP(MD). 11729/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st Respondent in TIN No. 33184740501/2013-14 and quash the proceedings dated 30.03.2015 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

Prayer in WP(MD). 11730/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 1st Respondent in TIN No. 33185740501/2012-13and quash the proceedings dated 23.04.2014 in so far as the levy of purchase tax under Section 12(1) (C) of the TNVAT Act as it is unlawful and contrary to the provisions of the Act.

1. Counsel for Appellants in WA(MD) Nos. 557/2019, 647/2019 to 653/2019, 666/2019 and 667/2019 ... Mr.R.D.Ganesan

2. Counsel for Appellants in WA(MD) Nos. 611/2019 to 614/2019 ... Mr.S.Karunakar

3. Cousel for Respondents in all the Writ Appeals ... Mr.S.Angappan, **Government Advocate.**

COMMON JUDGMENT

[Common Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

These writ appeals have been filed by various dealers challenging the common order dated 06.12.2018 passed by the learned Single Bench in W.P(MD)Nos.11425 of 2016 etc., batch.

2. The prayer in the writ petitions may be varied. Essentially, the challenge was to the notices issued by the Assessing Officer proposing to revise the assessment and levying

purchase tax. The notices were issued in exercise of the powers conferred on the Assessing Officer under Section 27 of the TNVAT Act (the Act). The challenge to the revision notices was on the ground that the goods dealt with by the appellants were classified under 4th schedule and therefore, exempted from levying tax under Section 15 of the Act.

3. Further, the appellants' case is that the Assessing Officer should have applied the law laid down by the Honourable Supreme Court in the case of the *State of Tamil Nadu v. M.K.Kandasami and others* reported in *(1975) 36 STC 191*, for levy of purchase tax by invoking Section 12 of the Act.

4. Further, it is contended that the Assessing Officer failed to consider that Section 15 of the TNVAT Act exempts from tax both on sale and purchase of pulses and grams covered under Entry 68 of Part B of the 4th schedule by specifying the turnover limit of Rs.500/- crores in a year. Further, it is contended that the clarification made by the Commissioner of Commercial Taxes is contrary to the provisions of Sections 15 and 12 of the TNVAT Act.

5. Further, the first respondent namely the Assessing Officer erroneously stated that the exemption provided under Entry 68 of Part B of the 4th schedule is a conditional one and not a general one and it is contrary to Section 15 of the Act though specifying the threshold limit of the turnover.

6. The learned Single Judge had elaborately heard the matter and disagreed with the petitioners and dismissed the writ petitions.

7. The petitioners are aggrieved by the said order and are before us by way of these writ appeals reiterating the grounds raised in the writ petitions.

8. We have heard the learned counsel appearing on either side.

9. At the very outset, we wish to point out that the writ petitions were liable to be dismissed as they were premature because what was impugned in the writ petitions were revision notices issued by the Assessing Officer under Section 27 of the Act proposing to revise the turnover and levy purchase tax under Section 12(1)(C) of the Act. There are few cases where the Assessing Officer has *suo motu* not exercised his revisional powers, but has been directed to do so by the Enforcement Wing pursuant to the inspection conducted in the place of business of the dealers. Thus, essentially, the challenge was to a reopening of assessment.

10. Under normal circumstances, reopening of assessment is not interfered in a writ petition unless it is established that reopening is wholly time barred or clear case of change of opinion.

11. In the instant case, the argument revolves around the issue as to whether Section 15 of the Act exempts from tax both on sale and purchase of pulses and grams covered by Entry 68 of 4th schedule by specifying the turnover limit of Rs.500/- crores in a year. Further, it is contended that the rate of taxes payable is zero and this aspect requires to be considered.

12. In our view, the matter pertains to rate of tax and particularly on the classification of goods and these are the issues to be decided by the Assessing Officer at the first instance. The appellants/petitioners should not be permitted to by-pass the normal procedure and the writ Court cannot exercise its jurisdiction against the proposal to revise the turnover.

13. It is true that the appellants/petitioners are aggrieved by certain circulars issued by the Commissioner of Commercial Taxes, which may bind the Assessing Officer not the dealer, who was not a party to the circular. In fact, there is also a power for the Commissioner to revise the circular, when a third party files a revision petition stating that the circular should not be applied to their case. Therefore, the appellants/dealers are entitled to contend that the circular would have no application to their case. If such contention is accepted, it goes without saying that the Assessing Officer should consider the case of the dealer independently uninfluenced by a circular issued by a third party. This is so because the Assessing Officer has been held to be an independent statutory authority and he cannot be directed to complete the assessment in a particular fashion. If he does so, he would be derelicting from his statutory duties.

14. There are several decisions of the Division Bench of this Court, which have clearly held as to how the Assessing Officer has to independently proceed with the matter. The apprehension of the appellants is that the Assessing Officer will not do so blindly following the circular. Further, the learned counsel for the appellants would contend that there are other circulars issued by the Commissioner, which are in favour of the assessee. If so, it is well open to the dealers to rely upon those circulars.

15. The other aspect is with regard to the directions given by the Enforcement Wing. The report of the Wing at best can be a *prima facie* material to issue the revision notice. But, after the dealer has given reply to the revision notice, the Assessing Officer is bound to decide the matter based on the objections given by the dealer and not blindly follow the report of the enforcement

officials. Therefore, the proper course to be adopted by the appellants is to file their objections to the impugned revision notices and the Assessing Officer should be directed to decide the objections independently uninfluenced by any circular, which was obtained by a third party and also uninfluenced by any directions that may be given by the Enforcement Wing.

16. The learned counsel for the appellants expressed an apprehension that in the light of the finding rendered by the Writ Court, there is likelihood of the Assessing Officer being prejudiced.

17. The appellants are put in such a situation by their own volition. Because, they come to challenge the revision notices by filing writ petitions without filing objections to the notices. In any event, as we have held that the writ petitions were premature, we have to necessarily vacate the finding rendered by the learned Single Judge on the taxable issue leaving it open to the Assessing Officer to consider the individual case of the dealers individually and independently.

18. For the above reasons, while holding that the writ petitions filed against the revision notices are premature and liable to be dismissed, we vacate the finding rendered by the learned Single Judge in the impugned order with a direction to the appellants to file their objections to the revision notices within 30 days from the date of a copy of this judgment and on receipt of objections, we direct the respective Assessing Officers to adjudicate the revision notices based on the contentions advanced by the dealers in their objections and the documents that may be produced at the time when personal hearing is offered to the dealers. The Assessing Officer shall take independent decision in the matter uninfluenced by any of the observations made in any circular issued at the instance of third parties or at any event uninfluenced by the observations made in the order passed by the Writ Court, which are vacated.

With the above directions, the writ appeals are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Pm

To

1.The Principal Secretary,
The Commissioner of Commercial Taxes,
Chepauk, Chennai.

2. The Assistant Commissioner (CT),
Virudhunagar-III Assessment Circle,
Virudhunagar.

3. The Assistant Commissioner (CT)-II,
Virudhunagar-II Assessment Circle,
Virudhunagar.

4. The Assistant Commissioner,
Theni-I Assessment Circle,
Theni.

+10 CC TO MR.R.D.GANESAN, Advocate Sr. No.95688 TO 95697
+2 CC TO MR.S.KARUNAKAR, Advocate Sr. No.95431 & 95432
+1 CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 95444

JUDGMENT IN
W.A.(MD)Nos.557, 611 to 614, 647 to 653, 666 and 667 of 2019
31.10.2019

SGS(CO)
TR(03.12.2019) 10P 18C