BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **08.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)Nos.558 to 564 of 2019
and
C.M.P(MD)Nos.4696 to 4702 of 2019

W.A.(MD)No.558 of 2019:-

P.Mariappan ... Appellant / Petitioner in all WAs

Vs.

1.The Deputy Commercial Tax Officer,
Commercial Tax Office,
Tenkasi.

2.The Principal Secretary,
The Commissioner of Commercial Taxes,
Chepauk, Chennai. ... Respondents/Respondents in all WAs

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 06.12.2018 passed in W.P(MD)No.23284 of 2015, W.P(MD)No.23285 of 2015, W.P(MD)No.23286 of 2015, W.P(MD)No.23287 of 2015, W.P(MD)No.23288 of 2015, W.P(MD) No.23289 of 2015, W.P(MD)No.23290 of 2015 respectively.

Common Prayer in WP(MD)Nos. 23284/2015 to 23290/2015 :

Writ Petitions are 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.33795680462 / 2009-10, TIN No.33795680462 / 2010-11, TIN No.33795680462 / 2011-12, TIN.No.33795680462 / 2012-13, TIN No.33795680462 / 2013-14, TIN.No.33795680462 / 2014-15, and TIN No.33795680462 / 2007-08 respectively and quash the proceedings dated 23.11.2015 in so far as the levy of purchase tax under section 12(1) (C) of the TNVAT Act and the consequential levy of penalty under section 27 (3) of the TNVAT Act and it is unlawful and contrary to the provisions of the Act.,

For Appellant : Mr.R.D.Ganesan
For Respondents : Mr.A.K.Baskarapandian
SPL GP For R1 & R2

COMMON JUDGMENT

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

These writ appeals have been filed by the appellants, who are the dealers registered under the provisions of the TNVAT Act (the Act), questioning the correctness of the common order passed by the learned Single Bench, dated 06.12.2018 in W.P(MD)Nos.11425 of 2016 etc., batch., dismissing the writ petitions filed challenging the assessment orders passed under the Act.

2. The legal issue raised in all these writ petitions is with regard to the levy of purchase tax under Section 12 of the Act r/w Section 15 of the Act, which exempts tax on purchase of chillies if the total turnover of the buyer and seller is below Rs.300 crores in a year as per Entry 18 of Part B of the 4th schedule. The Assessing Officer initiated proceedings for revision of assessment largely based upon the circulars issued by the Commissioner of Commercial Taxes, dated 17.10.2014 and 04.12.2014. Admittedly, the circulars were issued not at the instance of any appellants/dealers, but, at the instance of Chamber of Commerce and Industries. It is true that the circulars will be binding upon the revenue, but, it will bind the Court. Equally, the dealers are entitled to submit their objections to the revision notices raising contentions on merits. But however, if the Commissioner, who is the Head of Department has issued a circular, then obviously, the Assessing Officer would not be in a position to take an independent view though the Courts have held that the Assessing Officer having issued revision notice and received objections from the dealer has to independently apply his mind and take a decision, if not done, it would amount to abdication of his statutory powers.

3. More or less identical issue was considered by us in W.A (MD)No.557 of 2019 etc., batch, vide judgment dated 31.10.2019. One of the differences in those cases was the commodities dealt with by the appellants/dealers and that of the commodity dealt with by the appellants/dealers in the present case. The other difference was in those appeals, the writ petitions were filed against the revision notices, whereas in the instant case, the writ petitions were filed challenging the assessment orders. At this juncture, it would be useful to refer to the operative portion of the judgment in W.A(MD)No.557 of 2019 etc., batch.

> *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.

4. In the above decision, we had pointed out that the dealer has to exhaust the remedy available under the provisions of the Act and go through the adjudication process and not by-pass such remedy. In the instant case also, if we apply the same analogy, then we have to relegate the appellants to avail the appeal remedy. However, taking note of the fact that the revision notices itself came to be issued pursuant to the circulars issued by the Commissioner and there is no detailed consideration of the objections raised by the appellants/dealers in the impugned assessment orders, while applying the decision rendered by us in the case referred to supra, we are inclined to set aside the impugned order and remand the matter back to the Assessing Officer to consider the matter as indicated by us in the aforementioned judgment. Since the assessment orders were passed in the year 2015 and they have been pending before the Writ Court since then, it would be appropriate for the Court to direct the appellants to submit additional objections wherein they will be entitled to raise both legal and factual submissions.

5. In the earlier judgment, we have vacated all the findings rendered by the learned Single Judge as if it is allowed to be remained, then the purpose of the remand itself would be defeated. Therefore, in these cases as well, we vacate the findings rendered

by the learned Single Judge while remanding the matter to the Assessing Officer for fresh consideration.

6. In the result, the writ appeals are allowed and the order passed in the writ petitions stands set aside. Consequently, the assessments orders dated 23.11.2015 are set aside and the pre-revision notices are restored to file of the Assessing Officer and the appellants are directed to file their additional objections within a period of three weeks 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. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Pm

To

1.The Deputy Commercial Tax Officer,
Commercial Tax Office,
Tenkasi.

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

+1 CC to Mr.R.D.GANESAN, Advocate (SR-97089[F] dated 08/11/2019)

JUDGMENT IN
W.A.(MD)Nos.558 to 564 of 2019
08.11.2019

VB(04.12.2019) 5P 4C