IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 10920 to 10926 of 2015
and
M.P. Nos. 1 to 1 of 2015

M/s. Sasi Constructions,
Represented by Managing Partner,
No. 12, Kanniya Street,
Amaindakarai,
Chennai - 600 029. ... Petitioner in all W.P.s

-vs-

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Daulath Towers, 7th Floor,
Taylors Road,
Kilpauk,
Chennai - 600 010. ... Respondent in all W.P.s

Prayer in W.P. No. 10920 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2007-2008 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10921 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2008-2009 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10922 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2009-2010 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10923 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2010-2011 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10924 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2011-2012 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10925 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2012-2013 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

Prayer in W.P. No. 10926 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the Respondent in TIN: 33541022902/2013-2014 dated 10.03.2015 and quash the same as passed overlooking the letter dated 28.01.2015 filed by the Petitioner requesting for documents and also passed contrary to the law laid down by the Division Bench of the Madras High Court in the case of Emcee Chemicals in W.P. Nos. 8766 to 8768 of 2000 and further direct the Respondent to grant the documents requested by the Petitioner in its letter dated 28.01.2015 and thereafter grant reasonable opportunity to the Petitioner to file objections and pass a fresh assessment order in accordance with law.

For Petitioner : Mr. P.Rajkumar (in all W.P.s)

For Respondent : Mr. A.N.R.Jayaprathap,
Government Advocate (Taxes) (in all W.P.s)

C O M M O N O R D E R

(through video conference)

Heard Mr. P.Rajkumar, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate (Taxes) appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was issued notices for re-assessment of tax for the years 2007-2008 to 2012-2013 and notice for assessment of tax for the year 2013-2014 on 14.06.2014 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short). The Petitioner had initially sought time to place his objections by letter dated 10.07.2014 and made a request for extension of 20 more days to place his objections by another letter dated 26.12.2014. The Petitioner had on 28.01.2015 sent yet another letter stating as follows:-

> " We wish to state that some of the old records were not able to be collected because of the shifting of our records from the old Auditor to the new Auditor. Hence they are not readily available to verify and file our objections to the notices with reference to the records.
>
> We therefore request your Honour to kindly issue Xerox copies of all the monthly returns (original revised), annual, etc., financial statements filed, Assessment notices issued, objections filed, Assessment orders issued by the Officers, and all other records available in the Assessment files) for the years 2007-08, 2008-09, 2009-2010 and 2010-11 so as to enable use to file our reply objections to the notices.

We will pay the expenses towards Xerox copies on hearing from you Sir.

Since the Input Tax Credit carried over from year after year, the continuation of the ITC has to be considered for Assessment and also for filing our reply objections to other subsequent assessment years.

We therefore request you Honour to kindly grant us time till we get the Xerox copies from your office records and file our Reply objections to the notices for all the years.”

The receipt of that letter has been acknowledged on 29.01.2015 for which proof has been produced. However, the Respondent has on 10.03.2015 proceeded to pass re-assessment orders for the years 2007-2008 to 2012-2013 and assessment order for the year 2013-2014 without even referring to the said letter dated 28.01.2015. Aggrieved thereby, the Petitioner has filed these Writ Petitions challenging the said orders.

3. The primordial contention of the Learned Counsel for the Petitioner is that when the Petitioner has made a specific request in the letter dated 28.01.2015 that he wanted certain documents from the Respondents to submit his reply, the Respondent ought to have communicated the decision as to whether the request of the Petitioner could be acceded, and if not, the reasons for the same, would have to be disclosed in writing, but the Respondent has wrongfully proceeded to pass the impugned orders, which entail adverse civil consequences to the Petitioner, without having carried out the said exercise. In this context, reference has been made to the Circular dated 05.04.1984 issued by the Commissioner of Commercial Taxes, which reads as follows:-

“ It is considered that the dealers should know then and there whether their request for further time is complied with or not. The Assessing Officers shall pass orders on such requests on spot and communicate them then and there. If they feel that the dealers have already been given reasonable opportunities and sufficient time and there is no reason for granting further time and order rejecting the request shall be passed and communicated to the dealers then and there. If the assessing officers decide to comply with the request the date fixed for further hearing or extension of time given shall be similarly intimated.”

The said circular came up for consideration before the Division Bench of this Court in M/s. EMCEE Chemicals -vs- Registrar, Tamil Nadu Taxation Special Tribunal, Chennai (Order dated 25.09.2001 in W.P. Nos. 8766 to 8769 of 2000), where it has been held as follows:-

“2. The circular referred to relied upon by the assessees is the one issued by way of clarification by the Commissioner on 05.04.1984. That circular required Assessing Officers to pass orders on requests time from assessees on spot and communicate to them then and there. It also states that if the Assessing Officers feel that the dealers have already been given reasonable opportunities and sufficient time, there is no reason for grating further time, the order rejecting the request shall be passed and communicated to the dealers then and there. If the Assessing Officers decide to comply with the request the date fixed for further hearing on extension of time given shall be similarly intimated. Here no date was given to the Petitioners and Petitioners after their request for extension and they were not made aware that the time granted was only two weeks. The order made by the Officer at the end of the period while leaving the assessees with the impression that by reason of the period of time sought by them not having been rejected, that period could be regarded by them as has been granted, has therefore, to be set aside with a view to give the assessees the opportunity to give explanation to the demand, fused or slips that had been recovered and on the basis of which a finding of suppression was accorded, which is turn led to a substantial addition to the turnover of the assessees, liability to pay additional tax. We, therefore, set aside the order of the Tribunal, and of the authorities, which were questioned before it and direct the Assessing Officer to receive the objection for the proposed assessment, if such objection is filed within a period of two weeks from today and thereafter make the assessment. Writ Petitions are disposed of accordingly."

Having regard to that settled legal position, the faulty decision-making process adopted by the Respondent while passing the impugned order cannot be sustained.

4. The result of the foregoing discussion is that the impugned orders are set aside and the Respondent would have to communicate the decision taken as to whether the request made for supplying documents could be accepted and if not, the reasons for the same would have to be stated in writing. If it is decided to furnish the said documents, its cost shall be informed to the Petitioner by 31.12.2020 and the Petitioner shall make payment for the same within a period of 5 working days from the date of its receipt. On receipt of the said charges, the documents shall be supplied to the Petitioner within a period of 10 working days thereafter. The Petitioner shall then submit its reply within a period of 15 working days from the date of receipt of the required documents, or the date of receipt of the order of rejecting the request for supplying documents, as the case may be. It is incumbent upon the Respondent to conduct enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural

justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vjt/dm

To

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Daulath Towers, 7th Floor,
Taylors Road,
Kilpauk, Chennai - 600 010.

1 cc to Spl. Government Pleader, (Taxes), Sr. 38748

W.P. Nos. 10920 to 10926 of 2015

GMR (CO)
kk 19/12