IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM

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

W.P. No. 2270 of 2016
and
W.M.P. No. 1963 of 2016

Bharat Petroleum Corporation Ltd.,
Represented by its Senior Manager (Finance),
N. Lakshmi,
Ranganathan Garden,
11th Main Road, Anna Nagar,
Chennai – 600 040. ... Petitioner

-vs-

The Deputy Commissioner (CT) I,
Large Tax Payers Unit,
34 (123), Marshalls Road,
Egmore,
Chennai – 600 008. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN: 33941021809/2011-12 dated 06.02.2015 as confirmed by proceedings in TIN: 33941021809/2011-12 dated 11.12.2015, quashing the same.

For Petitioner : Mr. N.Prasad

For Respondent : Mrs. G.Dhana Madhri
Government Advocate (Taxes)

O R D E R

(through video conference)

Heard Mr. N.Prasad, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, 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 had submitted returns for the year 2011-2012 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) to the Respondent for which there was deemed assessment on 30.06.2012 in terms of the proviso to Section 22(2) of the TNVAT Act. In the interregnum, an audit was conducted at the place of the

business of the Petitioner by the Enforcement Wing Officials of the Commercial Tax Department from 13.12.2011 to 23.01.2012 and on receipt of the report in that regard, the Respondent had issued notices dated 30.01.2012, 20.02.2012 and 10.08.2012 calling for explanation for which the Petitioner had sought for opportunity of personal hearing by letters dated 29.07.2013 and 14.06.2014. According to the Petitioner, the Respondent did not accept its explanation and had proceeded by Order No. TIN/33941021809/2011-12 dated 06.02.2015 to fasten liability of tax relying only on the audit report received from the Enforcement Wing Officials of the Commercial Tax Department. Though the Petitioner made an application dated 25.02.2015 under Section 84 of the TNVAT Act for rectification, the Respondent by order in TIN/33941021809/2011-12 dated 11.12.2015 re-affirmed the earlier order. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the aforesaid proceedings of the Respondent.

3. The grievance sought to be ventilated by the Petitioner in this Writ Petition is that the fastening of liability for tax under the TNVAT Act cannot be made by merely relying on the audit report of the Enforcement Wing Officials of the Commercial Tax Department and that the Respondent, as the Assessing Authority exercising quasi judicial powers under the statute, has to independently apply his mind before acting on that audit report, but such exercise had not taken place in the present case. In support of the said contention, reliance is placed on the decision of this Court in Bharat Petroleum Corporation Ltd., -vs- Deputy Commissioner (CT) I, Chennai (Order dated 21.09.2020 in W.P. Nos. 1570 and 1571 of 2015) between the same parties for the assessment years 2009-2010 and 2010-2011, where this Court accepted that submission citing the binding decisions of this Court on that aspect of the matter and had set aside those proceedings and remitted the matter for fresh consideration. It is contended by the Learned Counsel for the Petitioner that the same benefit would have to be extended to the Petitioner for the year 2011-2012 also, which is sought in this case.

4. Having regard to the aforesaid submissions made by the Learned Counsel for the Petitioner, which deserves acceptance, there does not appear to be any justification to uphold the orders, which have been passed only with the audit report from the Enforcement Wing Officials of the Commercial Tax Department without any independent application of mind by the Respondent as required by law as reiterated by the decisions of this Court in Madras Granites (P) Ltd., Vs. Commercial Tax Officer (Order dated 30.10.2002 in W.P. Nos. 13428 and 39403 of 2002) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri (Order dated 21.11.2014 in W.P. No. 29465 of 2014). It would necessarily follow that the impugned orders in TIN: 33941021809/2011-12 dated 06.02.2015 and in TIN:

33941021809/2011-12 dated 11.12.2015, which have been passed by the Respondent in respect of the assessment of the Petitioner for the year 2011-12 under the TNVAT Act, are set aside and the matter is remitted for fresh consideration. It is incumbent upon the Respondent to examine the audit report and take an independent decision as to whether the same requires any action against the Petitioner, and if so, a notice shall be issued by the Respondent to the Petitioner specifying those aspects calling for explanation and after affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, each of the contentions raised shall be dealt with and reasoned orders shall be passed on merits and in accordance with law and the decision taken shall be communicated to the Petitioner under written acknowledgment.

The Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vjt/Maya

To

The Deputy Commissioner (CT) I,
Large Tax Payers Unit,
34 (123), Marshalls Road,
Egmore,
Chennai - 600 008.

1 cc to M/s. Spl. Government Pleader, (Taxes), Sr. 39205

W.P. No. 2270 of 2016

SJ (CO)
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