IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 5206 to 5211 of 2013
and
M.P. Nos. 1, 1, 1, 1, 1 & 1 of 2013

Tvl. Aswini Apartments
Represented by its Proprietrix
P. Bhavani,
No.88, Brindavan Street,
Chennai - 600 033. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Ashok Nagar Assessment Circle,
Chennai - 600 078. ... Respondent in all W.Ps

Prayer in W.P. No. 5206 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2006-2007 dated 31.12.2012 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

Prayer in W.P. No. 5207 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2007-2008 dated 31.12.2012 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

Prayer in W.P. No. 5208 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2008-2009 dated 31.12.2012 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

Prayer in W.P. No. 5209 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2009-2010 dated 11.01.2013 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

Prayer in W.P. No. 5210 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2010-2011 dated 11.01.2013 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

Prayer in W.P. No. 5211 of 2013: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in TIN 33411401225/2011-2012 dated 11.01.2013 on the file of the respondent and quash the same as illegal, arbitrary and against the provisions of the TNVAT Act.

For Petitioner (in all W.Ps) : Mr. A. Thiagarajan Senior Counsel

For Respondent (in all W.Ps) : Mr. A.N.R. Jayaprathap Standing Counsel

COMMON ORDER

By this common order all the six Writ Petitions are being disposed.

2. In these Writ Petitions, the petitioner has challenged the impugned Show Cause Notices dated 31.12.2012 and 11.01.2013 issued by the respondent in bearing reference TIN.No.33411401225/2006-2007, TIN.No.33411401225/2007-2008, TIN.No.33411401225/2008-2009, TIN.No.33411401225/2009-2010, TIN.No.33411401225/2010-2011 and TIN.No.33411401225/2011-2012, for the Assessment Years 2006-2007 to 2011-2012.

3. By the impugned notices dated 31.12.2012 and 11.01.2013, the respondent has proposed to tax for the Assessment Years 2006-2007 to 2011-2012. The main grievance of the petitioner is that the impugned notices have been issued to the petitioner based on the collateral proceedings initiated against the petitioner under the Finance Act, 1994 demanding service tax from petitioner.

4. It is the contention of the learned senior counsel for the petitioner that such exercise has impermissible. It is further submitted that in the notices the respondent has already made up his mind and therefore, the impugned notices are liable to be quashed in the light of the decision of this Court in Rajam Industries (P.) Limited Vs. Addl. D.G, D.C.E.I., Chennai, 2010 SCC OnLine Mad 6374, wherein, a learned Single Judge of this Court has held as follows:-

> 60. In a case like that of the present one, at the initial stage of issuing show-cause notice

> itself, if the first respondent has entered into the adjudication which certainly requires an opportunity of being given to the petitioner to cross-examine the persons who gave statements against him, such act, in my considered view, is a clear violation of the principles of natural justice which cannot be said to be an empty formality, in spite of such conclusion arrived at by the first respondent, it cannot be presumed that the adjudicating authority will independently apply his mind and decide the issue. Moreover, on an analysis of the entire show-cause notice, as I have elicited earlier, even though a large portion of it, is relating to the factual finding arrived at after investigation, the various indiscriminate words like, clandestine removal, deliberate conduct, etc., by the first respondent investigating authority, is not expected to be used, for maintaining a healthy trend at the time of issuing show-cause notice.

5. In the above case, the Court had interfered with the Show Cause Notice stage itself, but directed the respondents therein to issue a fresh Show Cause Notice.

6. The learned senior counsel for the petitioner also relied on the another decision of the Division Bench of this Court rendered in Madurai Metal Industries Vs. Union of India, (1991) 52 ELT 495, which was followed in Rajam Industries (P.) Limited (cited supra), wherein, in paragraph (3), this Court held that the extracted passages from the Show Cause Notice showed that the respondents therein has foreclosed and pre-judged their mind and therefore the Show Cause Notice issued was quashed. The said Paragraph (3) reads as under:-

> 3. Without any ambiguity it has been stated that it is proved beyond any shadow of doubt that the dealers have been clandestinely indulging in massive purchases and sales suppressions by manoeuvring and manipulating their accounts deliberately and wilfully. We have no doubt in our mind that this passage clearly indicates a foreclosed and a pre-. judged mind.

7. Per contra, the learned standing counsel appearing for the respondent submits that the notices only make out the prima facie case. It has relied on the information which they gathered from the respondent's premises through their Enforcement Wing on

26.03.2012, 27.03.2012, 28.03.2012 and 17.04.2012, where certain documents were seized and based on the records seized from the petitioner, proposals had been issued through impugned notices after detailing their proposals in the said impugned notices running up to 30 pages.

8. I have considered the arguments advanced by the learned senior counsel for the petitioner and the learned standing counsel for the respondent.

9. The impugned notices merely contain the proposal based on which the demand is to be confirmed in the course of adjudicatory proceedings. If the proposal in the impugned notices are exaggerated, it is open for the petitioner to file its replies and meet out the allegations in the impugned notices.

10. Merely because the Department has recovered certain documents which they construed as incriminatory documents for fastening the liability on the petitioner by itself will not amount to pre-judging the issue.

11. The proposal contained in the impugned notices also cannot be construed as pre-judging of the issue or foreclosure of mind. The impugned notices merely contain that the proposal and the ground on which the Department proposes to confirm the demand and therefore the petitioner has been called upon to show cause as to why the demand should not be confirmed.

12. I am of the view that there are no merits in the challenge to the impugned notices. The petitioner should therefore participate in the adjudicatory mechanism prescribed under the Act by filing its reply. If the impugned notices do not confirm the law on the subject certainly, the respondent would be duty bound to drop the proceedings. However, to quash the impugned notices stating that the notices are inspired from the impugned notices issued to the petitioner under the provisions of the Finance Act, 1994 or that the respondent has made up its mind in the impugned notices can be countenanced. Writ Courts cannot and should not interfere with Show Cause proceedings unless such proceedings are without jurisdiction. I do not find any reasons to hold the impugned notices without jurisdiction.

13. Since the impugned notices were issued on 31.12.2012 and 11.01.2013, I direct the petitioner to file detailed replies to the same within a period of forty five days from the date of receipt of a copy of this order and on the expiry of 60th day. The respondent shall call upon the petitioner for personal hearing thereafter and pass appropriate order on merits within a period of three months from the date of receipt of a copy of this order.

14. These Writ Petitions are disposed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb / jen

To

The Assistant Commissioner (CT),
Ashok Nagar Assessment Circle,
Chennai - 600 078.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No. 8954
+1cc to the Special Government Pleader, S.R.No. 9590

W.P. Nos. 5206 to 5211 of 2013
and
M.P. Nos. 1, 1, 1, 1, 1 & 1 of 2013

KS(CO)
GN(25/06/2020)