IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 11.09.2020

PRONOUNCED ON : 18.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.31986, 33177, 33193 & 33197 of 2018
and
WMP.Nos.38521, 38522, 37242, 37248, 38501, 38523 & 38525 of 2018

R.Rajan ...Petitioner in all W.Ps.

Vs.

The State Tax Officer,
Perur Circle,
Coimbatore,
Coimbatore District. ...Respondent in all W.Ps.

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in his impugned proceedings made in TIN No.33541924808/2015-16, 2012-13, 2013-14 & 2014-15 respectively dated 16.07.2018 and to quash the same as illegal and direct the respondent to redo the assessment in terms of Section 6 of the TNVAT Act, 2006, after affording the petitioner an opportunity of personal hearing.

For Petitioner : Mr.J.Prasanna Kumar

For Respondent :Mr.R.Swarnavel, GA (T)

COMMON ORDER

With the consent of both parties, the present Writ Petitions are heard through Video Conferencing on 11.09.2020.

2. During the time of inspection, the officials had identified Form-T received from Coimbatore Corporation and Panchayat Union for the Financial Year 2015-16 and since they were of the view that the petitioner, being a Works Contractor should file the returns in Form I or Form L under Section 5 or 6 under TNVAT Act, 2006 and accordingly issued the impugned orders dated 16.07.2016, levying tax and penalty.

3. The impugned orders are liable to be set aside on two grounds. Firstly, the Hon'ble Division Bench of this Court in the case of The Assistant Commissioner (CT) (FAC), Arumbakkam Assessment Circle, Chennai Vs. M/s.Spectrum Decors (Chennai) Private Limited, Arumbakkam, Chennai in W.A.No.963 of 2018 dated 19.12.2019, had held that mere lapse of making a formal application, though no such form is prescribed under the Rules, cannot be said to be fatal to apply Section 6 of the Act to the Assessee. The relevant portion of the order reads as follows:

"11.The terms of Sub-section (2) to Section 6, which employs the terms "may apply to the assessing authority" prima facie indicates that the said requirement is of a directory nature and not mandatory. The words used are not "shall" but "may'. The words "may" usually would render compliance of the provision directory and not mandatory. Therefore, the said requirement of exercise of option by way of application cannot be said to be a condition precedent for availing the benefit of payment of compounded rate of tax under Section 6 of the Act. The substantial compliance with the provisions of the Act in the form of not making any purchases from outside the State and payment of tax under monthly returns under Form 'L' has been satisfied by the Assessee.

12.Therefore, merely lapse of making a formal application, though no such form is prescribed under the Rules, cannot be said to be fatal to apply Section 6 of the Act to the Assessee in the present case. The principles of 'Substantial Compliance' or 'Substantial Justice' as against the narrower approach of considering the provisions in stricto sensu should prevail in such case to meet the ends of substantial justice even in the case of Fiscal Statutes, as is available before us in the present case."

4. Secondly, the impugned orders in the present case emanates from the reports of the Inspecting Officials. The issue involved in these Writ Petitions is that the impugned proceedings are made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, the petitioner herein has raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the reports and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

5. This ground raised by the petitioner has been upheld by this Court in various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of ***Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another*** reported in ***2006 (146) STC 642 (MAD)*** and ***Narasus Roller Flour Mills Vs. Commercial***

Tax Office, (Enforcement Wing), Sankagiri and another reported in ***2015 (81) VST 560 (MAD)***.

6. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of Circular No.3 dated 18.01.2019 reads thus:-

> *"b)If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."*

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

7. In view of the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, all the impugned proceedings in these Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are set aside and consequently, the matters are remanded back to the Assessing Officer. The Assessee is granted liberty to file his objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessees/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings independently and not being influenced by any of the reports or proposals of the Enforcement Wing /ISIC authorities. Such an exercise shall be completed atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above.

8. For all the foregoing reasons, the impugned orders dated 16.07.2016 are set aside and consequently, the Writ Petitions stand allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

18.09.2020

Index:Yes/No
Order: Speaking/Non-speaking

DP

To

The State Tax Officer,
Perur Circle,
Coimbatore,
Coimbatore District.

M.S.RAMESH.J,

DP

ORDER MADE IN

W.P.Nos.31986, 33177, 33193 & 33197 of 2018 and WMP.Nos.38521, 38522, 37242, 37248, 38501, 38523 & 38525 of 2018

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