BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.12.2020
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P (MD) No.15485, 15494, 15497 & 17235 of 2020
and
W.M.P.(MD).Nos.13002, 13010, 13011 & 14425 of 2020
(Through Video conferencing)

W.P.(MD).No.15485 of 2020

Tvl Arun Cards,
Represented by its Proprietor,
N.Arunachalam ... Petitioner

Vs

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai-600 005.

2. The Assistant Commissioner (ST),
   Rockfort Assessment Circle,
   Commercial Taxes Complex,
   Cantonment, Trichy-620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33193402359/ 2011-2012 dated 16.07.2020 and quash the same.

W.P.(MD).No.15494 of 2020

Tvl Arun Cards,
Represented by its Proprietor,
N.Arunachalam ... Petitioner

Vs

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai-600 005.

2. The Assistant Commissioner (ST),
   Rockfort Assessment Circle,
   Commercial Taxes Complex,
   Cantonment, Trichy-620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33193402359/ 2012-2013 dated 16.07.2020 and quash the same.

W.P.(MD).No.15497 of 2020

Tvl Arun Cards,
Represented by its Proprietor,
N.Arunachalam ... Petitioner

Vs

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-600 005.

2. The Assistant Commissioner (ST),
   Rockfort Assessment Circle,
   Commercial Taxes Complex,
   Cantonment, Trichy-620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33193402359/ 2013-2014 dated 16.07.2020 and quash the same.

W.P.(MD).No.17235 of 2020

Tvl Arun Cards,
Represented by its Proprietor,
N.Arunachalam ... Petitioner

Vs

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-600 005.

2. The Assistant Commissioner (ST),
   Rockfort Assessment Circle,
   Commercial Taxes Complex,
   Cantonment, Trichy-620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33193402359/ 2014-2015 dated 16.07.2020 and quash the same.

For Petitioner : Mr.B.Rooban
(In all Writ Petitions)

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In all Writ Petitions)

COMMON ORDER

These Writ Petitions have been filed challenging the impugned assessment orders, dated 16.07.2020 passed by the second respondent under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, against the petitioner for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15.

2. Heard Mr.B.Rooban, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondents in all these Writ Petitions.

3. It is the case of the petitioner that in the impugned assessment orders, no independent assessment has been made by the second respondent. According to the petitioner, in all the impugned assessment orders, the second respondent has mechanically accepted the report of the Enforcement Wing Officials of the respondent based on their inspection in the petitioner's business premises on 15.10.2014.

4. It is the contention of the petitioner that they are not doing any purchase from other States. However, according to him, the second respondent has held that the petitioner has been doing other state purchases which has been suppressed in his monthly returns and therefore, the petitioner is liable to pay tax as well as penalty under the Tamil Nadu Value Added Tax Act, 2006. It is the contention of the petitioner that the lorry receipt dated 01.10.2015 never related to any purchase / sale transaction of the petitioner from other States. According to the petitioner, the said lorry receipt pertains only to the receipt of sample greeting cards by the petitioner from other States and according to him, no sale / purchase was effected from other States. It is the case of the petitioner that a detailed reply was sent to the revision of assessment notices sent by the second respondent, wherein, they have requested for documents, based on which, the second respondent has proposed to revise the original assessments.

5. It is the contention of the petitioner that despite the said request, the second respondent has not supplied copies of those documents to the petitioner. It is the case of the petitioner that the second respondent has passed the impugned assessment orders by mechanically accepting the report of the Enforcement Wing Officials and by mechanically confirming the proposals made under their revision of assessment notices.

6. It is the contention of the petitioner that the impugned assessment orders are ex-facie arbitrary, illegal and against the provision of the Tamil Nadu Value Added Tax Act, 2006 and the second respondent has also violated the principles of natural justice. In such circumstances, these Writ Petitions have been filed challenging the impugned assessment orders passed against the petitioner under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15.

7. Mr.B.Rooban, learned counsel for the petitioner has drawn the attention of this Court to the impugned assessment orders which are the subject matters of these Writ Petitions. In particular, he referred to the observations of the second respondent, found in paragraph No.4(iii) of the impugned orders and would submit that when the petitioner has raised a categorical stand that they have not effected sales / purchases from other States, it is impossible for the petitioner to produce the documents with regard to the alleged sales / purchases outside the State requested by the second respondent. However, according to the learned counsel for the petitioner, arbitrarily and by total non application of mind, the second respondent in the impugned assessment orders has observed that the petitioner has not produced any documents regarding further details of the purchases and the copies of the lorry receipt, when it is impossible for the petitioner to produce those documents as the petitioner has never effected sales / purchases outside the States.

8. Further, it is the contention of the learned Counsel for the petitioner that slip of papers recovered from the petitioner during the inspection conducted by the Enforcement Wing Officials of the respondents pertains only to the assessment year 2014-15 and not for the other assessment years, namely, 2011-12, 2012-13 and 2013-14. Therefore, according to him, by total non application of mind, the same reasoning has been given by the second respondent for the assessment years 2011-12, 2012-13 and 2013-14 also.

9. The learned counsel for the petitioner then drew the attention of this Court to the replies sent by the petitioner to the revision of assessment notices sent by the respondents, wherein, they have categorically denied that they have sold / purchased goods from the other States. Referring to all those replies, the learned counsel for the petitioner would also point out that the petitioner has also intimated the respondents that the lorry receipt seized by them, pertains only to the receipt of the sample cards by the petitioner from other States and does not reveal that the petitioner has effected purchases from other States. He would also submit that the petitioner in their respective replies to the revision of assessment notices, has called upon the respondents to furnish the following details to the petitioner:-

> *"1)Kindly inform the name of the seller who is sold goods from other state to us, which you have made the assessment against me.*
>
> *2)Kindly inform the date of sale and value of sale made by the so called other state seller.*
>
> *3)Kindly provide copy of lorry receipt in which you have made the assessment.*
>
> *4)Kindly provide details of payment of lorry freight in which you have made the assessment.*
>
> *5)Kindly provide copies of the purchase invoices in which you have."*

10. According to the learned counsel for the petitioner despite the request made by the petitioner, the respondents have not furnished the above mentioned details and without furnishing the said particulars, the impugned assessment orders have been passed. Therefore, according to him, the impugned orders passed by the second respondent is arbitrary, illegal and has violated the principles of natural justice.

11. The learned counsel appearing for the petitioner drew the attention of this Court to the following authorities:-

(a). A decision of this Court reported in (***1977) 40 STC 434 (Mad)*** in the case of ***Deputy Commissioner of Commercial Taxes, Tiruchirapalli Vs. N.Subramaniam Chettiar*** dated 09.09.1976.

(b). A decision of this Court made in ***W.P.Nos.9026 to 9029 of 2018***, dated 13.04.2018, in the case of ***M/s.Sharoff Syndicate represented by its Manager Vs. The Assistant Commissioner (CT), Mayiladuthruai-I Assessment Circle, Mayiladuthurai.***

12. Referring to the aforementioned decisions, the learned counsel for the petitioner would submit the following:-

(a). A slip of paper seized by the respondent from the petitioner will not come within the meaning of "transaction" under Section 17 of the Tamil Nadu Value Added Tax Act 2006. According to him, there must be an actual sale or purchase and only then, the dealer is liable to tax and therefore, the petitioner has discharged his burden by proving that the piece of paper seized by the respondent does not relate to any sale or purchase from other States.

(b). The alleged admission of liability before the Enforcement Wing officials on the date of inspection cannot be the sole basis for revision of assessments and an independent assessment will have to be made by the second respondent while passing the impugned orders under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006.

13. Per contra, the learned Special Government Pleader appearing for the respondents would vehemently oppose the submissions of the learned counsel for the petitioner. According to her, several opportunities were granted to the petitioner in the impugned assessment proceedings to enable him to provide necessary documents requested by the second respondent with regard to the sales / purchases effected by the petitioner. According to the learned Special Government Pleader, the ledger books pertaining to the sales / purchases were never produced by the petitioner in the assessment proceedings, despite several requests made by the respondents. She would further submit that adequate opportunity was granted to the petitioner in the impugned assessment proceedings to produce all records / documents. But, despite the same, the petitioner has failed to produce the same.

14. According to her, an independent assessment has been made by the respondent and only thereafter, the impugned assessment orders have been passed against the petitioner. The learned Special Government Pleader would also refer to the impugned assessment orders and would submit that the lorry receipt was also seized from the petitioner, which will reveal the fact that the petitioner has effected inter-state sale. According to her, the contentions raised by the petitioner in their replies have been duly considered by the second respondent and only thereafter, the impugned assessment orders have been passed.

15. This Court has given due consideration to the materials placed before this Court as well as the submissions made by the rival counsels.

16. It is an admitted fact that before passing of the impugned orders, the petitioner in his reply, dated 21.06.2019 has requested the respondents to furnish the following particulars:-

(a). The name of the seller to whom the goods were allegedly purchased from other States.

(b). The date of sale and the value of sale made by the so-called other State sellers.

(c). A copy of the lorry receipt based on which the proposal to revise the assessment was made against the petitioner.

(d). The details of payment of lorry freight based on which the proposal for revision of assessments has been made.

(e). The copies of the purchase invoices pertaining to the alleged purchases made by the petitioner based on which the proposal for revision of assessments was made.

17. The receipt of the replies sent by the petitioner has not been disputed in the impugned assessment orders. In the impugned assessment orders, the second respondent has made the following observations:-

> *"i). They have requested to provide the copy of other State purchase invoices, details of calculation for which it will be appropriate to reproduce their own statement given before the inspecting officials* "வெளி மாநிலத்திலத்திலிருந்து கொள்முதல் செய்த (பொருட்களுக்கு) சரக்கிற்கு எவ்வித ஆவணங்களும் என்னிடம் இல்லை. தங்களின் தணிக்கை சமயம் தங்களிடம் சமர்பிக்கவில்லை என தெரிவித்தேன்...." *In as much as they have failed to produce any documents relating to the other state purchase turnover before the inspecting officials, the purchase turnover has been adopted as per their statement only and the details of calculation were already given to them on 15.10.2014 (Date of inspection) and also furnished in the notice and the assessment order.*
>
> *ii). Regarding their contention that they have not claimed exemption during the year 2014-15, it is reiterated that they have claimed exemption in the returns e-filed by them for the year 2014-15 and they have furnished the details in Annexure II of their returns.*
>
> *iii). They have stated that no slip of paper has been recovered regarding transportation. It would be pertinent to state here that receipt No.A713, dated 01.10.2014 of Tvl.Sharma Transports, Bangalore, has been recovered, which was also signed by them on the date of inspection i.e., 15.10.2014 . As they have denied that they have no documents regarding further details of their purchase, further copies of lorry receipts could not be furnished to them.*
>
> *iv). Section 17 of TANVAT Act, 2006, lays down that "Burden of Proof---(1) For the purpose of assessment of tax under this Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer". Hence burden of proof lies on them only.*
>
> *v)Finally they have stated that they have enclosure to their letter, but failed to enclose the same.*

In order to follow the principles of natural justice, personal hearing was posted again on 2.05.2019 to represent their case either in person or through their authorized representative before the Assessing Officer, with the following documents pertaining to the year 2014-2015

(a).Purchase Bills
(b).Sales Bills
(C).Trading, Profit and Loss Account, along with Audited Balance Sheet
(d).Day Book and Ledger Book
(e).Bank Statement

It was also informed in the notice, that if you fail to avail the opportunity in this regard, assessment order would be passed under the TNVAT Act, 2006, as proposed without any further notice."

18. As seen from the above, the lorry receipt No.A713, dated 01.10.2014 of Tvl.Sharma Transports, Bangalore, which was recovered from the petitioner pertains only to the assessment year 2014-15. However, the same has been reflected in all the impugned assessment orders, which goes to show that mechanically the second respondent has passed the impugned assessment orders and without applying his mind to the lorry receipt, dated 01.10.2014 (Receipt No.A713) which pertains only to the assessment year 2014-2015.

19. A categorical stand has been taken by the petitioner that he has not effected sales / purchases from other States. No document has also been seized from the petitioner by the Enforcement Wing Officials of the respondents with regard to the alleged sales / purchases effected by the petitioner from other States. The only document seized by the Enforcement Wing Officials from the petitioner is the lorry receipt No.A713, dated 01.10.2014 of Tvl.Sharma Transports, Bangalore. With regard to the same, it is the contention of the petitioner that the said lorry receipt pertains only to the delivery of sample cards from other States, as the petitioner is a card seller in the State of Tamilnadu and does not involve any purchases / sales from other States. It is the case of the petitioner that sample greeting cards were obtained from other States, which is for the purpose of displaying and the lorry receipt No.A713, dated 01.10.2014 recovered by the Enforcement Wing Officials, is only pertaining to the same and does not involve any purchase effected by the petitioner from other States.

20. It is the contention of the petitioner that no inter-state sale / purchase was effected by him and it is for the respondent to produce the documentary evidence to establish that the petitioner had effected interstate sale / purchase. However, as seen from the impugned assessment orders, the second respondent has observed that no document with regard to the purchase mentioned in the proposal made by the respondents for revision of assessments on the petitioner, has been produced by the petitioner. This Court is of the considered view that the impugned assessment orders passed by the second respondent are arbitrary and have been passed by total non application of mind.

21. The second respondent ought to have furnished the documents which they are relying upon for passing the impugned assessment orders to the petitioner, as the petitioner has discharged his burden, as per Section 17 of Tamil Nadu Value Added Tax Act, 2006. As seen from the impugned assessment orders, the second respondent has passed the same only on the ground that no document has been furnished by the petitioner with regard to the proposal made by them for revision of assessments.

22. The other ground for passing the impugned assessment orders is that before the Enforcement Wing Officials during their inspection, the petitioner has admitted that he is not having any documents for having effected inter-state sales / purchases and the Enforcement Wing Officials have also submitted their report that the petitioner has indeed effected sales /purchase from other States.

23. It is settled law that there must be an independent assessment made by the second respondent, while passing the assessment orders under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006. The second respondent cannot mechanically accept the findings of the Enforcement Wing Officials in his report submitted to the second respondent. The judgments relied upon by the learned counsel for the petitioner referred to supra will also reveal the fact that the documents seized by the Enforcement Wing Officials from the petitioner must reveal the fact that the sale / purchase comes within the meaning of “transaction”.

24. It is also settled law that as per the decision referred to by the learned counsel for the petitioner in the case of ***M/s.Sharoff Syndicate represented by its Manager Vs. The Assistant Commissioner (CT), Mayiladuthruai-I Assessment Circle, Mayiladuthurai, made in W.P.Nos.9026 to 9029 of 2018***, dated 13.04.2018, that there must be an independent assessment made by the second respondent, while passing the assessment orders and the second respondent cannot mechanically accept the findings of the Enforcement Wing Officials.

25. For the foregoing reasons, this Court is of the considered view that the impugned assessment orders have been passed by total non application of mind and principles of natural justice has been violated by the second respondent by not affording copies of the documents sought for by the petitioner in his replies.

Accordingly, the impugned assessment orders passed by the second respondent for the assessment years 2011-12, 2012-2013, 2013-14 and 2014-15 are hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner and also by affording him the right of personal hearing and also by furnishing all the documents, based on which, they have proposed to revise the assessment under Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006, within a period of twelve weeks from the date of receipt of a copy of this order.

26. These Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

To

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-600 005.

2. The Assistant Commissioner (ST),
   Rockfort Assessment Circle,
   Commercial Taxes Complex,
   Cantonment, Trichy-620 001.

+1cc to Mr.B.Rooban, Advocate, SR.No.23582.
+1cc to Spl GP SR.Nos.23626 & 23625.

Common Order made in
<u>W.P (MD) Nos.15485, 15487, 15494 & 17235 of 2020</u>
<u>01.12.2020</u>

DKS(CO)
CS(05.01.2021) 10P 5C