IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.02.2021
Pronounced On	12.02.2021

CORAM
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.24789 of 2015
and
M.P.No.2 of 2015

(Through Video Conferencing)

M/s.Jain Jubilant Cars Private Limited,
Represented by its Director,
No.18/3, Raja Annamalai Building,
Rukumani Lakshmipathy Salai,
Egmore, Chennai – 600 008. ...Petitioner

Vs.

1. The Joint Commissioner (CT),
Enforcement – I,
Chennai – 600 006.

2. The Commercial Tax Officer /
Senior Audit Officer,
Group – VI, Enforcement (North),
Greams Road, Chennai – 600 006.

3. The Assistant Commissioner (CT),
Egmore Assessment Circle,
Chennai. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the second respondent in his VAT Audit report in VA-02 dated 14.03.2014 and quash the same as the VAT Audit was conducted without jurisdiction as per the orders of the first respondent as per TNVAT Act.

For Petitioner : Mr.C.Baktha Siromoni
For Respondents: M/s.G.Dhanamadhini, G.A.

O R D E R

The petitioner has challenged the impugned VAT Audit Report dated 14.03.2014 primarily on the ground that the VAT Audit was conducted by the second respondent Commercial Tax Officer/Senior

Audit Officer, Enforcement (North), Chennai, based on an authorization of the first respondent Joint Commissioner (CT), Enforcement-I, Chennai which is impermissible under Section 64 (4) of the Tamil Nadu Value Added Tax Act, 2006.

2. The learned counsel for the petitioner submitted that the VAT Audit conducted by the second respondent was based on the authorization of the first respondent and was therefore without jurisdiction and contrary to Section 64 (4) of the TNVAT Act, 2006. In this connection, reference was made to the decision of this Court rendered in W.P.No.7564 of 2015 dated 18.03.2015, in the case of M/s.Arkema Peroxides India Pvt. Ltd., Vs The Joint Commissioner (CT), Chennai and others, wherein, in Paragraph 5 it was held as follows:-

> "5. Though the respondents has not produced any document to prove the contention of the respondents and it may be correct that there may be instruction in the office note, a reading of the impugned order would show that the Joint Commissioner has authorised to do the audit of the business of the registered dealer viz., the petitioner and the same is not stipulated under Section 64(4) of the Tamil Nadu Value Added Tax Act, which reads as follows:
>
> "Section 64(4) The Commissioner may order audit of the business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Officer. For the purpose of this Section, the selection of dealers for audit shall be made amongst the dealers-
>
> 64(4) (a) who have not filed returns within the prescribed period; and
>
> 64(4) (b) who have claimed exorbitant amount of refund of tax; or
>
> 64(4) (c) who have filed returns, but in the opinion of the Commissioner he is not satisfied with the correctness of any return filed, any claim made, deduction claimed or turnover disclosed in any such return; or ...." "

3. The learned counsel for the petitioner also placed reliance on a recent decision of the Hon'ble Division Bench of this Court passed on 04.06.2019 in W.A.No.1757 of 2019 in the case of The Joint Commissioner (CT), Chennai and others Vs

M/s.Original Vel Sporting News, Chennai, wherein, in Paragraphs 10, 11 & 13, it was held as under:-

> "10. It is clear that the said sub-section (4) does not empower the Commissioner to delegate the power to pass order to any lower authority. Therefore, the application of mind by the Commissioner himself about the nature of the default by the particular Assessee concerned and therefore there is a need to audit the books of accounts and other revenue records of the business of that Assessee has to be recorded by the Commissioner himself. The words "any registered dealer" in Sub-Section (4) indicated a singular dealer and not a group of Dealers. Therefore, such orders under Section 64(4) cannot be passed for a group of registered dealer in one go. The recording the opinion about the default of the assessee cannot be construed to be an administrative function or administrative order passed by the Commissioner. Therefore, such an order under Section 64(4) of the Act can be nothing but a quasi-judicial order, entailing civil consequence for the Assessee or Dealer concerned. In view of this, the orders to be passed under 64(4) of the Act have to meet the principles of natural justice viz., the compliance of the priciples of audit alteram partem, giving of a notice and opportunity of hearing to the assessee concerned. The Assessee before the Commissioner can always contend that no such default as stipulated in Section 64(4) clause (a) to (e) is made out against him and if he places such a case before the learned Commissioner, it is incumbent upon of the Commissioner to apply mind and pass appropriate speaking and reasoned order in this regard. Therefore, passing of an omnibus or general order to audit of business of dealers like done in the present case, does not fit in the scheme of Section 64(4) of the Act at all. Laying down of certain criteria, as has been done in the order dated 16.05.2014, is nothing but specifying certain limits of the criterias specified in Section 64(4) of the Act. Even in the provision itself, the Commissioner under Section 64(4) of the Act is not expected to issue a general guideline or a Circular for guiding all the lower authorities. Section 64 (4) of the Act envisages an individual order for audit of the books and accounts and other

revenue records of the assessee for a particular period and it has to be individual order showing the application of mind to the facts and circumstances of each case for each period. The power to delegate further is not provided under Section 64(4) of the Act. Therefore, the manner in which the impugned order dated 16.05.2014, has been passed by the learned Commissioner laying down certain limits or criterias quoted above leaving it free for the Joint Commissioner to authorise officers below to undertake such audit is wholly untenable and unsustainable order.

11. The audit of the books and accounts of an assessee is required not only under the provisions of Section 64(4) of the Act but such provisions, which may be applicable to the assessee concerned, may be under the other relevant statutes also like the provisions of the Companies Act, if an assessee is a limited Company, under the provisions of the Income Tax Act, vide Section 142(2A) thereof as well. The Income Tax Act even contains a provision in Section 142(2A) for direction of the special audit by the Authority concerned after giving an opportunity of hearing to the assessee. Therefore, directing the audit of the accounts of the company of the assessee is a serious matter and is not a simple administrative act. A reference hereto the judgment of Karnataka High Court in M/s.Karnataka Industrial Area Development Board vs Assistant Commissioner of Income Tax in W.P.No.1863 of 2017 connected with W.P.No.25223 of 2016 dated 02.01.2018 is appropriate.

13. Therefore, we are of the considered view that the order of the learned Commissioner under Section 64(4) of the Act is a quasi-judicial order, requiring a prior notice of hearing to the assessee and passing of a reasoned speaking order in individual cases of registered dealers for conducting audit by the specified Authority as directed by the Commissioner. The order dated 16.05.2014 does not meet these requirements of law at all."

4. In Paragraph 14, it was further observed as under:-

"14. .... The provisions in Section 64(4) of the Act do not specify anything about the notice for hearing to the registered dealers but the mere absence of such a provision does not prevent this Court from directing such a requirement to be complied with by the Department viz., Commissioner before directing such audit under Section 64(4) of the Act. A reference for this proposition of law can be made to Institute of Chartered Accountants of India vs. L.K.Ratna and others, (1986) 4 SCC 537.”

5. Per Contra, the learned Government Advocate for the respondents submits that the authorization that was issued by the first respondent merely identified an officer to carry out the order and therefore there is no irregularity in the VAT Audit conducted by the officer, namely, Commercial Tax Officer/Senior Audit Officer, Enforcement (North), Chennai (second respondent herein). It is submitted that the VAT Audit was authorized only by the Commissioner of Commercial Taxes.

6. Under these circumstances, the learned counsel for the Government Advocate prayed for dismissal of this writ petition. The learned counsel for the Government Advocate has also relied on the following citations:-

i. M/s.Devashi Enterprises, Chennai Vs The Joint Commissioner (CT), Chennai and others rendered in W.P.No.31825 of 2015.

ii. M/s.Empress Audio, Chennai Vs Commissioner of Commercial Taxes, Chennai and others rendered in W.P.No.6031 of 2018.

iii. Pooran Mal Vs The Director of Inspection (Investigation) New Delhi and others, (1974) 1 SCC 345.

7. It is submitted that in M/s.Empress Audio, Chennai case referred to supra, the contention of the respondents was accepted in Paragraph 19, which reads as under:-

“19. I agree with the submissions made by Ms.G.Dhana Madhuri, that it is impossible for the Commissioner to name Deputy Commercial Tax Officers or Commercial Tax Officers, who will conduct the VAT Audit in respect of a particular dealer. The Commissioner being the Head of Department is required to discharge several duties, which are onerous. Therefore, the manner in which the office and the staff have to be utilised and administered is well open to be regulated by the Head of Department. It is not for the dealer to dictate terms as to how the Commercial Tax Department should organise its business. The directives issued to the Joint Commissioner to take forward the direction to conduct audit is an administrative decision by the Commissioner and being the Head of Department, it is well within his jurisdiction to issue such direction for effective and efficient administration of his department. Thus, the petitioner by placing reliance on the expression authorised used in the statement cannot discredit the entire proceedings alleging the same to be without jurisdiction. The Court being fully satisfied that VAT Audit has been authorised by the Commissioner in accordance with Section 64(4) of the Act, is not inclined to accept the case of the petitioner."

8. Therefore, the learned Government Advocate for the respondents was called upon to furnish copy of order of the Commissioner of Commercial Taxes authorizing the Joint Commissioner (CT), Chennai to nominate Commercial Tax Officers to carry out the such audit.

9. Pursuant to the same, the learned counsel for the Government Advocate has produced a copy of the authorization of the Commissioner of Commercial Taxes, Chepauk, Chennai, dated 21.08.2013 bearing reference Letter No.Q3/11740/2013, which reads as under:-

COMMERCIAL TAXES DEPARTMENT

From Dr.K.Manivasan, I.A.S., Commissioner of Commercial Taxes, Chepauk, Chennai - 5.	To All the Joint Commissioners (Enf.)

Letter No.Q3/11740/2013 dated 21/08/2013

Sir,

Sub : Arresting of tax evasion and verification of huge ITC claims - List of dealers sent - Instruction issued to arrange for VAT Audit u/s 64(4) of the TNVAT Act, 2006 - Reg.

As you are aware the overall revenue collection of the Department has gone down very much registering a growth rate of about 5%. One of the major reasons attributed to such lesser realization of revenue is mismanagement of ITC flow by certain dealers and consequent accumulation of ITC. But the contribution of the Enforcement Wing in arresting this kind of tax evasion is much below the expectation. Therefore, the list of dealers who have claimed ITC more than Rs.25 lakhs to Rs.50 lakhs, Rs.50 lakhs to Rs.1 crore and above Rs.1 crore in respect of your jurisdiction is enclosed. I request you to arrange for VAT Audit u/s 64(4) of TNVAT Act, 2006 for all the dealers enumerated in the list and complete the audit by 30.09.2013. Priority may be given to conduct audit of the dealers claiming huge quantum of ITC. In case of shortage of Enforcement Wing officials, the services of DCTOs and Superintendents from the Territorial Wing may be utilized for the purpose of conducting the above audit. The progress report on the completion of audit may be sent every week.

Sd/ - K.Manivasan
Commissioner of Commercial Taxes

Additional Commissioner (SMR)

Encl: List of dealers

Copy to:
All the Joint Commissioners (Territorial) for information and necessary action.

10. The learned counsel for the Government Advocate further submits that the Commissioner of Commercial Taxes has not delegated the power to conduct audit to the subordinate officers. On the other hand, the Commissioner of Commercial Taxes has merely identified the assessee in respect of whose affairs, audit can be conducted under Section 64(4) of the TNVAT Act, 2006 and has merely authorized the Joint Commissioner to identify the concerned officer for conducting the audit. The learned counsel for the Government Advocate further submits that the decision relied by the learned counsel for the petitioner in Joint Commissioner (CT), Chennai and others Vs M/s.Original Vel Sporting News, Chennai in W.A.No.1757 of 2019 dated 04.06.2019 is under review and even if the authorization was bad, as per the decision of the Hon'ble Supreme Court in Pooran Mal Vs The Director of Inspection (Investigation), New Delhi and others, (1974) 1 SCC 345, it has to be held that even when search and seized conducted were in violation of the provisions would not render finding void. She refers to paragraph No.25 of the decision which reads as under:-

> 25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income tax authorities against the person from whose custody it was seized and, therefore, no Writ of Prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs.

11. The learned Government Advocate for the respondents submits that the aforesaid view was followed by this Court in W.P.No.31825 of 2015 in Devashi Enterprises, Chennai Vs The Joint Commissioner (CT), Chennai and others.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents. I have also perused the impugned order sought to be challenged in the present Writ Petition.

13. The petitioner has challenged the VAT Audit Report dated 14.03.2014 of the second respondent on the ground that the Audit conducted by the second respondent was in contravention of Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006, as per which, the Commissioner may order for audit of the business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Officer.

14. It is noticed that by a communication dated 21.08.2013, the Commissioner of Commercial Taxes has identified the dealers whose business were to be audited and common letter was addressed to all the Joint Commissioners (CT), Enforcement. The Commissioner has sent a list of dealers whose business were to be audited in terms of Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006. The VAT Audit was carried out by the first respondent in presence of a Commercial Tax Officer as is evident from the signature and seal in the VAT Audit Report. The Commercial Tax Department depends on officers to conduct the Audit. It cannot mean that Audit has to be personally carried out by an officer not below the rank of Deputy Commercial Tax Officer.

15. The fact that the statements were recorded in the presence of a Commercial Tax Officer, by itself, will not mean that there is violation of Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006. It merely explained that a Commissioner

may order for audit of the business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Officer. In this case, authorization to conduct the Audit was based on the order of the Commissioner of Commercial Taxes to all the Joint Commissioners (Enforcement). The first respondent had in turn conducted the Audit with the help of the second respondent. Merely because the statements were recorded in front of the second respondent, by itself, will not mean that the Audit was carried out by the second respondent in contravention of 64(4) of the Tamil Nadu Value Added Tax Act, 2006.

16. By a letter dated 24.10.2013, it was also confirmed that the VAT Audit was conducted in respect of 27 units and that the VAT Audit was completed for 24 units and that the proposals were sent to about 22 Assessing Authorities in respect of completed cases. Only 3 cases were pending. The statement also states that about 260 notices were to be issued and in respect of the other assessees, the Audit was yet to be commenced.

17. In any event, no prejudice or harm will be caused to the petitioner merely because the Audit Report was generated after an Audit held on 14.03.2014. After the Audit is completed, a notice is to be sent for revision of assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. It is therefore not open for the petitioner to disown and distance itself for the liability that may be eventually fastened under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

18. Under these circumstances, I find no merits in the present Writ Petition. The decisions cited by the learned counsel for the petitioner in support of the present case in M/s.Arkema Peroxides India Pvt. Ltd. case referred to supra and M/s. Original Vel Sporting News, Chennai case referred to supra are distinguishable on facts of the case as authorization for conducting the VAT Audit under Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006 was authorised by the Commissioner to all the Joint Commissioners (Enforcement). I therefore do not find any reasons to interfere with the impugned VAT Audit Report which was attested by the second respondent.

19. The respondents are directed to issue appropriate Notice in accordance with law and complete the proceedings and pass appropriate order, within a period of six months from the date of receipt of a copy of this order. Needless to state, before such order is passed, the petitioner shall be heard either in person or through video conferencing due to the prevalence of Covid 19 pandemic.

20. The petitioner is directed to file its reply/written submission to such notice to be issued by the respondents,

within a period of 30 days from the date of receipt of such notice.

21. In the light of above observations, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

arb / jen

To

1.The Joint Commissioner (CT),
Enforcement - I,
Chennai - 600 006.

2.The Commercial Tax Officer /
Senior Audit Officer,
Group - VI, Enforcement (North),
Greams Road, Chennai - 600 006.

3.The Assistant Commissioner (CT),
Egmore Assessment Circle,
Chennai.

+1 CC to The Special Government Pleader(T) sr 8545.

W.P.No.24789 of 2015
and M.P.No.2 of 2015

GMI(CO)
SP(01/03/2021)