IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2963 to 2967 of 2014
and
M.P.Nos.1 to 1 of 2014

SKT Textile Mills,
182, Chettypalayam Road,
Palladam Post, Tirupur District,
Rep. By its Authorised Signatory,
Mr.P.M.Nachimuthoo. .. Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Palladam Circle,
Palladam,
Tirupur District. .. Respondent in all W.Ps.

Prayer in W.P.No.2963/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in TIN No.33576243183/2007-08 dated 23.10.2013 and quash the same.

Prayer in W.P.No.2964/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in TIN No.33576243183/2008-09 dated 25.10.2013 and quash the same.

Prayer in W.P.No.2965/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in TIN No.33576243183/2009-10 dated 25.10.2013 and quash the same.

Prayer in W.P.No.2966/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in TIN No.33576243183/2010-11 dated 25.10.2013 and quash the same.

Prayer in W.P.No.2967/2014: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceedings of the

Respondent in TIN No.33576243183/2011-12 dated 04.11.2013 and quash the same.

(In all W.Ps.)

For Petitioner : Mr.M.Hariharan

For Respondent : Mr.V.Nanmaran
(Government Advocate)

COMMON ORDER

The orders of revision of assessment passed by the respondent in proceedings dated 23.10.2013, 25.10.2013, 25.10.2013, 25.10.2013 and 04.11.2013 are under challenge in the present Writ Petitions respectively. The petitioner is a registered dealer and the Writ Petitions are filed mainly on the ground that the opportunity as contemplated under the provisions of the Act is not provided before passing the final orders of revision of assessment and therefore, the orders impugned are in violation of the principles of natural justice. The details regarding the facts deserves no further adjudication in view of the fact that the petitioner raised the sole ground that the orders impugned are to be set aside on the ground that the respondent passed the same unilaterally, without providing opportunity to the petitioner to submit their documents and defence statements.

2.The learned counsel appearing for the petitioner made a submission that pursuant to the notice issued on 12.08.2013, the petitioner submitted its reply on 17.09.2013. Further, they have requested in the said reply to grant two months time to file the certificate of payment. However, the respondent has neither accepted nor rejected the request seeking time and unilaterally proceeded and passed the impugned orders of revision of assessment. Thus, the respondent has violated the principles of natural justice and the petitioner was denied of their opportunity to produce the certificate of payments and other details. The learned counsel for the petitioner insisted that it is a fit case to remand the matter back. In support of the said contention, he cited the judgment of this Court dated 28.07.2010 passed in W.P.No.19393 of 2006 in the case of Esjyapee Impex (P) Ltd., Vs. The Commercial Tax Officer and the relevant paragraph is extracted hereunder:

> "11.In such circumstances, by applying the law laid down by the Hon'ble Division Bench which was passed after taking note of the clarification issued by the respondent Department, it has to be held that the impugned order to that extent, disallowing the exemption for an amount of Rs.40,47,000/- has to be held to be vitiated. The

Division Bench has held that when a request for extension is either granted or rejected, intimation there on should be given to the assessee then and there. Therefore, the explanation sought to be given by the respondent in the counter affidavit that the order of assessment was passed much after the period is no ground to justify their action. Thus, the order of the Division Bench fully supports the case of the petitioner and they are entitled to succeed."

The Kerala High Court, in the case of M/s.Euro Business System Vs. State of Kerala and another, reported in www.livelaw.in, held as follows:

> "5.Having perused Ext.P4 the typed copy of the assessment order and also the manuscript copy of the same and considering the fact that Ext.P4 was despatched from the office of the 2nd respondent only after 64 days from the date of order shown in Ext.P4, that too, after receipt of Ext.P3 reply filed by the assessee, we find that Ext.P3 reply filed by the assessee was well within the knowledge of the 2nd respondent before the order was issued for communication to the assessee. Non consideration of Ext.P3 reply filed by the assessee therefore amounts to violation of the principles of natural justice. Accordingly, Ext.P4 is set aside. The 2nd respondent is directed to pass an order afresh by looking into Ext.P3 reply given by the assessee on 22.10.2020. The said exercise shall be completed within eight weeks from the date of receipt of copy of this judgment. We make it clear that we have not expressed any opinion on the merits of the matter."

Relying the said judgments, the learned counsel for the petitioner reiterated that opportunity as contemplated under the provisions are not adhered to and thus, the Writ Petitions are to be allowed.

3.The learned Government Advocate appearing on behalf of the respondent made a submission that the respondent provided an opportunity and the petitioner had not availed the same and therefore, now the petitioner cannot blame the respondent for not passing any orders regarding the request made seeking time. He pleaded for rejection of the Writ Petitions.

4.Perusal of the counter affidavit filed by the respondent, reveals that, the records and account books produced by the Inspecting Officials were verified on 28.05.2012 and 29.05.2012.

After exhaustive verification of those records and hearing the explanations of the petitioner, the respondent identified the lapses. The provisions, as applicable and the judgments relied upon were referred to and the petitioner was informed about the same. Thereafter, an opportunity of hearing was provided to the petitioner and orders were passed.

5.It is contended by the respondent that the petitioner has taken about two years from the date of inspection. However, during the said period, the petitioner failed to seek any records for perusal and with reference to the lapses admitted by him. Thus, the contention of the petitioner that the orders are passed without granting time or without even communicating the refusal to grant time, is incorrect and false. The petitioner received the notice. The petitioner admits the receipt of notice, but failed to file his objections. Thus, the opportunity afforded by the respondent was not availed by the petitioner and without utilising the opportunities, the Writ Petitions are filed and thus, the same are liable to be dismissed.

6.Perusal of the orders impugned, the same would reveal that the merits are considered and findings are made available. However, the petitioner has raised the question. Their request to grant two months time to file certificate of payment in letter dated 17.09.2013 was not disposed of. In other words, no order of rejection or acceptance was passed. Thus, the petitioner was deprived of his opportunity to file the documents.

7.This Court is of the considered opinion that the assessees may work out their remedy in a calculated manner, some times to prolong and protract the issues. However, the authorities competent are expected to be cautious in the matter of following of the procedures contemplated. Evasion of Tax is a common phenomenon in our nation. Thus, the competent authorities while dealing with any issues are bound to be careful, more specifically in the matter of following the procedures as contemplated in the statute and the rules.

8.The impugned orders are passed in the year 2013 and the Writ Petitions are filed in the year 2014. The officials competent are expected to follow the procedures contemplated under the statute and rules scrupulously. The procedural violations, if any, committed would cause unnecessary delay and further, provide cause for further disputes on such technical grounds. The present Writ Petitions are classic case, where the issues are pending for more than six years. Thus, the authorities competent, on initiation of any proceedings under the Act, must ensure that the procedures are followed scrupulously in each case to avoid the procedural lapses.

9.The writ petitioner has raised the ground of violation of principles of natural justice. However, the nature of violations are to be ascertained and the Courts, if found that the procedural violations affecting the rights of the parties are violated, then the case is to be remanded back to the authority for the purpose of fresh consideration and to follow the procedures as contemplated under the rules in force. Undoubtedly, the appellate authority is the final fact finding authority and therefore, exhausting the appellate remedy is imminent.

10.The appellate authorities being a final fact finding authority, their adjudication with reference to the original records are of paramount importance and would provide greater assistance to the High Court, while exercising the power of judicial review under Article 226 of the Constitution of India. Thus, exhausting the appellate remedy is the rule and entertaining a Writ Petition is an exception. In the event of an imminent urgency or threat or damage which cannot be compensated or in certain circumstances warranting an urgent interference, then alone the Writ Petitions are entertainable by dispensing with the appellate remedy and in all other circumstances, the correctness or otherwise of the original authority by the appellate authority by adjudicating the mixed question of fact and law is mandatory and therefore, the High Court is expected to be cautious while dispensing with the appellate authority as contemplated under the statute.

11.In the present case, undoubtedly, the assessees are adopting the delay tactics. Unfortunately, the system also supports such litigants in disposal of the matters as such matters are kept pending for years together. Ultimately, such delay causes injury to the revenue for the State and sufferers would be the public at large in the society. Thus, the authorities are bound to be careful while dealing with such matters. The respondent is also expected to pursue the matters before the Courts vigilantly so as to get disposal as early as possible in such matters where fresh considerations are required on account of certain technical and procedural irregularities.

12.In view of the fact that the respondent has not disposed of the request made by the petitioner to grant two months time to file certificate of payment, the matter is to be remanded back for fresh adjudication by following the procedures. Accordingly, this Court is inclined to pass the following orders:

(i) The impugned orders passed by the respondent in proceeding TIN No.33576243183/2007-08 dated 23.10.2013, TIN No.33576243183/2008-09 dated 25.10.2013, TIN No.33576243183/2009-10 dated 25.10.2013, TIN

No.33576243183/2010-11 dated 25.10.2013 and TIN No.33576243183/2011-12 dated 04.11.2013 are quashed.

(ii) These matters are remanded back to the respondent for fresh consideration and for passing final orders by affording opportunity to the writ petitioner.

(iii) The petitioner is directed to file certificate of payment, defence statements or any other documents before the respondent within a period of two weeks from the date of receipt of a copy of this order. In the event of not filing any such document by the petitioner, the respondent is at liberty to proceed with the consideration and pass final orders.

(iv) The respondent is directed to pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and provide personal hearing if any such request is made by the petitioner.

13.Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

The Commercial Tax Officer,
Palladam Circle,
Palladam, Tirupur District.

+4c to Mr.S.Raveekumar, Advocate, S.R.No. 28918, 29821
+1cc to the Special Government Pleader(T), S.R.No. 29137

W.P.Nos.2963 to 2967 of 2014

SKY(CO)
GN(04/08/2021)