BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.02.2021
CORAM
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**
W.P.(MD)Nos.17580 and 17582 of 2019
and
W.M.P.(MD)Nos.14065 and 14066 of 2019

W.P.(MD)No.17580 of 2019:-

M/s.Loyal Textile Mills Limited,
represented by its Authorised Signatory Lakshmana Shankar,
Kovilpatti. : Petitioner

Vs.

The State Tax Officer-I,
Commercial Tax Building, Kovilpatti. : Respondent

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33615860011/2008-09 dated 14.05.2019 issued by the respondent and quash the same is wholly arbitrary, non speaking and violation of provisions of the TNVAT Act 2006 and to direct the respondent to pass an assessment order afresh by considering the reply dated 02.04.2019 and records filed by the petitioner.

For Petitioner :Mr.S.Karunakar
For Respondent :Mr.S.Dhayalan
Government Advocate

W.P.(MD)No.17582 of 2019:-

M/s.Loyal Textile Mills Limited,
represented by its Authorised Signatory Lakshmana Shankar,
Kovilpatti. : Petitioner

Vs.

The State Tax Officer-I,
Commercial Tax Building, Kovilpatti. : Respondent

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33615860011/2007-08 dated 14.05.2019 issued by the respondent and quash the same is wholly arbitrary, non speaking and violation of provisions of the TNVAT Act 2006 and to direct the respondent to pass an assessment order afresh by considering the reply dated 02.04.2019 and records filed by the petitioner.

For Petitioner :Mr.S.Karunakar
For Respondent :Mr.S.Dhayalan
Government Advocate

COMMON ORDER

Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondent.

2.Though the petitions are two in number, the petitioner in both cases is one and the same and the assessment orders alone are different.

3.The petitioner suffered an order under Section 27 of the Act, passed on 27.02.2014. Challenging the same, the petitioner filed an appeal before the Appellate Deputy Commissioner, Tirunelveli and on 06.12.2018, the appeal was allowed and the matter was remitted to the file of the original authority. The appellate authority observed that the case on hand requires deep analysis by the assessing officer. After remand, the petitioner was provided with personal hearing. The petitioner has also filed objections in writing. Thereafter, the impugned order came to be passed levying tax and penalty on the petitioner. Challenging the same, the present Writ Petitions came to be filed.

4.The respondent has filed a detailed counter affidavit. The learned Government Advocate appearing for the respondent would submit that the principles of natural justice have been complied with in letter and spirit in this case and that therefore, this Court ought not to entertain these Writ Petitions, but rather relegate the petitioner to avail the alternative remedy. He specifically emphasised the fact that the petitioner was given personal hearing and only after detailed consideration of the objection putforth by the petitioner, the impugned orders came to be passed.

5.I carefully considered the rival contentions and went through the materials on record. No doubt, after the remand, the petitioner filed their objections and they were also given personal hearing on 22.03.2019. But this alone cannot be determinative of the issue. As rightly pointed out by the learned Counsel for the petitioner, though the assessing authority claims that the objection filed by the dealer was verified and examined in detail, the impugned order does not disclose any application of mind. The assessing authority had cursorily dealt with the petitioner's objection. The specific stand of the petitioner is that they are entitled to avail ITC on the purchase of windmills. According to the petitioner, they are capital goods falling within the definition set out under Section 2 (11) of the Tamil Nadu Value Added Tax Act 2006. The assessing authority has baldly rejected the said stand.

6.The learned Counsel for the petitioner would draw my attention to the order, dated 13.12.2019 made in W.P.(MD)No.23423 of 2012 and 3455 of 2017 (***M/s.RSM Autokast Limited vs the Commercial Tax Officer, Avinashi Road Circle***) In the said decision, it has been held that wind turbines, on which ITC was availed by the assessee, are capital goods within the meaning of Section 2(11) of the Tamil Nadu Value Added Tax Act 2006. Thus, the case on hand appears to be covered by the aforesaid decision of this Court.

7.Be that as it may, the authority had unnecessarily referred to the non filing of objection in response to the earlier pre-revision notice dated 03.09.2012. That was wholly irrelevant. When the appellate authority had set aside the earlier order passed under Section 27 of the Act and remanded the matter and post remand, the petitioner have filed their objection, there was no need or necessity to what transpired in the earlier round. The assessing officer had again placed reliance on the fact of the dealer had admitted and accepted the discrepancies noticed by the enforcement wing officials during their inspection. This approach again runs counter to what has been laid down by the Madras High Court in more than one decision. The Madras High Court in the decision reported in ***(2006) 146 STC 642*** (***Madras Granites (P) Limited vs Commercial Tax Officer, Arisipalayam Circle, Salem and another***) held as follows:

> *"4......It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the mattes are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. ...."*

8.Thus, the third respondent had completely misdirected himself in law, as regards facts. The impugned orders are virtually non speaking. Therefore, on these grounds, the same are quashed and these Writ Petitions are allowed and the matter is remanded to the file of the respondents to pass orders afresh in accordance with law. The petitioner will be given an opportunity of personal hearing. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The State Tax Officer-I,
Commercial Tax Building,
Kovilpatti.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-6601[F] dated 23/02/2021)

+1 CC to M/s.SPL GP (SR-6699[F] dated 23/02/2021)

W.P.(MD)Nos.17580 and 17582 of 2019
22.02.2021

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KB(12.03.2021) 4P 4C