BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)Nos.19692, 19695,19698, 19700,20767, 20812,20840,20843,20845,25182, 25185,25188,25218,25230 of 2019
and
WMP(MD) Nos.16171, 16176, 16180, 16181, 21768, 21769, 21772, 17430, 17431, 17432, 17408, 17384, 21812, 21802 of 2019

P.Sankar ... Petitioner in WP(MD)Nos.19692 & 19695/2019

K.Moorthy ... Petitioner in WP(MD)No.19698/2019

P.Rajendran ... Petitioner in WP(MD)No.19700/2019

V.N.S.Akbar Ali ... Petitioner in WP(MD)Nos.20767 & 20812/2019

S.Gowrishankar ... Petitioner in WP(MD)Nos.20840, 20843 and 20845/2019

K.Parthasarathy ... Petitioner in WP(MD)Nos.25182, 25185 and 25188/2019

P.Rajkumar ... Petitioner in WP(MD)No.25218/2019

S.Noormohamed ... Petitioner in WP(MD)No.25230/2019

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 (CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai - 630 561. Respondents in all W.Ps.,

COMMON PRAYER: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in TIN:33235401313/2011-12 dated 05.05.2017, TIN:33235401313/2012-13 dated 05.05.2017, TIN:33285401237/2011-12 dated 22.03.2017, TIN:33695401739/2012-13 dated 17.05.2017, TIN:33695401739/2009-10 dated 17.05.2017, TIN:33895401144/2008-09 dated 21.04.2017, TIN:3389540144/2009-10 dated 21.04.2017, TIN:33895401144/2011-12 dated 21.04.2017, TIN:33485401030/2009-10 dated 23.03.2017, TIN:33485401030/2011-12 dated 23.03.2017, TIN:334854010302/2012-13 dated 23.03.2017, TIN:33475402539/2011-12 dated 18.05.2017 and TIN:33685400920/2007-08 dated 13.04.2017 respectively and quash the same.

For Petitioner : Mr.Raja Karthikeyan
in all W.Ps.,

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
in all W.Ps.,

C O M M O N O R D E R

These instant Writ Petitions have been filed by the petitioners to quash the impugned proceedings of the second respondent.

2. The petitioners are the work contractors registered with the second respondent. According to the petitioners, the second respondent after passing deemed cum original assessment orders under Section 22(2) of the TNVAT Act, had revised the assessment order under Section 27 of the TNVAT Act, by adding adhoc addition for certain defects in the accounts. The grievance of the petitioner is that the second respondent passed the impugned Revision of Assessment order even without any new/fresh facts, de hors the records and on mere change of opinion, which is against the provisions of the TNVAT Act.

3.The learned counsel for the petitioner would rely upon the similar order of this Court made in batch of Writ Petitions in W.P (MD)Nos.16874 to 16878 of 2018 etc.,and would pray to quash the impugned orders.

4.The learned Special Government Pleader appearing for the respondents would submit that on further scrutiny of assessment file and other relevant records the impugned orders came to be passed and therefore, there is no need to interfere with the same.

5.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

6.As pointed out by the learned counsel for the petitioner that the issues involved in these present writ petitions are squarely covered by the order of this Court in batch of Writ Petitions in W.P (MD)Nos.16874 to 16878 of 2018 etc, wherein, the learned single judge has elaborately discussed the issue in question and the relevant paragraphs are extracted hereunder for better appreciation.

"4.In all these cases, the assessing officer had imposed penalty by separate orders. As pointed out by the learned counsel appearing for the writ petitioners, the penalty can be imposed by separate orders only under Section 22 (5) of the TNVAT Act. If penalty is to be imposed under Section 27(3) of the TNVAT Act, then it has to form part of the assessment order and not by a separate order. This principle is no longer res integra. It has been so held as early as in the decision reported in (1976) 38 S.T.C. 382(Mad) (The Deputy Commissioner (C.T), Coimbatore Vs. V.S.R.Ramaswami Chettiar and Bros). The said decision was followed in the decision reported in (2011) 37 V.S.T. 592 (mad) (Rainbow Foundations Ltd., V.Assistant Commissioner (C.T)(FAC), T.Nagar (South) Assessment Circle, Chennai). It has been held that an order passed by the assessing authority levying penalty through an independent order is bad in law. Therefore, respectfully following the aforesaid decisions, the orders of penalty imposed in these writ petitions stand set aside.

5.A mere look at the impugned orders indicates that the impugned exercise was undertaken not pursuant to any discovery of new material. The very recital paragraph starts as follows:-

"Verification of the assessment records reveals that..."

It has been consistently held that the reopening of assessment by change of opinion is impermissible. This proposition was reiterated by the Honourable Supreme Court in the decision reported in (1993) V.S.T.441 (Ravi Prakash Refineries (P) Ltd, Vs.State of Karnataka).

6.The learned counsel appearing for the writ petitioners also placed reliance on the decision of this Allahabad High Court reported in (1998) 109 S.T.C 631 (All) (Parikh and Sons V.Trade Tax Officer, Sector 6) in which it has been stated that irrespective of the amplitude of the language used in the statutory provisions, reassessment proceedings are not permissible on mere change of opinion by the statutory authority at a subsequent stage.

7.In the present case, it appears that reassessment proceedings have been initiated following the raising of objections of the internal audit.

8.The petitioners herein are works contractors. The purchase tax under Section 12 of the TNVAT Act has been levied on them. It has been held in the decision reported in (1986) 61 S.T.C 337 (The State of Tamil Nadu Vs.East Coast Constructions and others) that where the goods have been used in the construction of buildings, such user cannot be said to be a disposal of goods as contemplated by clause (b) of Section 7-A(1) of the Tamil Nadu General Sales Tax Act, 1959. The said provision is in pari materia with Clause (b) of Section 12 of the TNVAT Act. The transaction in which the petitioners are engaged is said to constitute deemed sales.

9.Therefore, when the petitioners have already been visited with tax on that count, they cannot also be saddled with levy of purchase tax. Therefore, for all these reasons, the orders impugned in these writ petitions are set aside. The Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed"

7.This Court no doubt finds that the observations made by the learned single Judge of this Court extracted supra, squarely covers the issues presented in these cases. In view of the same, the impugned orders in all Writ Petitions are set aside. These Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(Records)

/True copy/

/ /2021
Sub Assistant Registrar(CS-)

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

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 (CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
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+1 cc to Mr.B.Rooban, Advocate SR No.16070

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vrn (1/2)

PK/24.05.2021 : 4P/4C