



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD)Nos.8828 and 8829 of 2018

and

W.M.P. (MD)Nos.8259 & 8260 of 2018

WEB COPY

Tvl.Sri Sabari Tex,
Represented by its Proprietrix
C.Suriya Praba, aged about 50 years,
W/o.P.Chidambaram,
No.19, Ahimsapuram 7th street,
New Extension-Sellur,
Madurai-625 002.

... Petitioner in both W.Ps.

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),
Chokkikulam Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

... Respondents in both W.Ps.

Prayer in W.P. (MD)No.8828 of 2018: Petition filed under Article 226 of the 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 33905004166/2012-13 dated 08.02.2018 and quash the same.

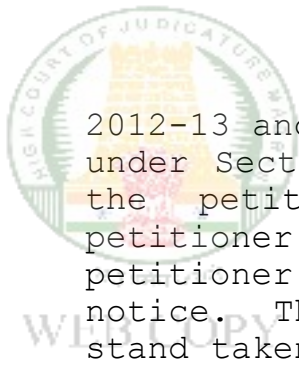
Prayer in W.P. (MD)No.8829 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33905004166/2013-14 dated 08.02.2018 and quash the same.

For Petitioner : Mr.B.Rooban
for Mr.Raja Karthikeyan
For Respondents : Mr.S.Dayalan
Government Advocate
(in both W.Ps.)

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner in both the writ petitions are one and the same. The assessment years are different. They pertain to the year

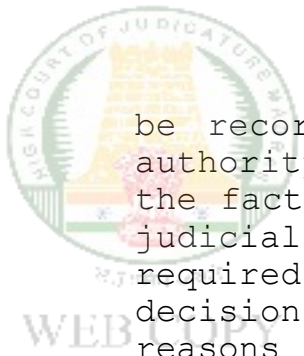


2012-13 and 2013-14. The petitioner's annual returns were finalized under Section 22(2) of the TNVAT Act. Following the inspection of the petitioner's business premises, the assessments of the petitioner for the aforesaid years were sought to be reopened. The petitioner was given pre-revision notice and also personal hearing notice. The petitioner filed his detailed objection. Rejecting the stand taken by the petitioner, the impugned orders came to be passed confirming the proposals set out in the pre revision notices. They are under challenge in these writ petitions.

3.The respondents have filed a detailed counter affidavit and the learned Government Advocate reiterated all the contentions set out therein. The learned Government Advocate wants this Court to sustain the orders impugned in these writ petitions.

4.Without going into the merits of the matter, I am of the view that the impugned orders are liable to be quashed. This is for the simple reason that the objections given by the petitioner have not at all been considered and non speaking orders have been passed. For instance, one allegation made against the petitioner is that there was non reporting of certain sales transactions. The petitioner tried to explain the same by pointing out that even though in the Form I return, they were not indicated, all the details have been properly disclosed in the Annexure II of the Form I return. When such an explanation has been given, it is the duty of the assessing authority to give finding as to whether the said explanation is correct or not. If really, the petitioner had made a frank disclosure in Annexure II, then the question of charging the petitioner with suppression will not arise at all. But in the impugned orders, this point canvassed by the petitioner has not at all been dealt with. The impugned orders are virtually non speaking. A learned Judge of this Court, vide order dated 25.08.2009 in W.P.(MD)No.2576 of 2009, had held as follows:-

"13. In my opinion, such a finding without reasons itself would be in violation of the principles of natural justice. In the case of *Muhurjee's case* reported in *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594, the Hon'ble Supreme Court held in paragraph Nos:35,38 and 39, are as follows:- "35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons



be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except

<https://hcservices.ecourts.gov.in/hcservices/>



in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

5. The ratio laid down in the aforesaid order would squarely cover the case on hand. The failure on the part of the assessing authority to take note of the objections raised by the petitioner vitiates the entire proceedings. On this sole ground, the orders impugned in the writ petitions are quashed. These Writ Petitions are allowed. The matter is remitted to the file of the second respondent. The second respondent will issue a fresh hearing notice to the petitioner and after hearing the petitioner, pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

Note :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),
Chokkikulam Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+1 CC to M/s.SPL GP (SR-5884[F] dated 18/02/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-6050[F] dated 19/02/2021)

W.P.(MD)Nos.8828 and 8829 of 2018

and

W.M.P.(MD)Nos.8259 & 8260 of 2018

17.02.2021

SSS(CO)

KK(26.02.2021) 4P 5C

<https://hcservices.ecourts.gov.in/hcservices/>