BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.20122 to 20124 of 2014
and
M.P.(MD)Nos.1,1 & 1 of 2014

M/s.V.V.V.Sons Edible Oils Ltd.,
Rep. by its Director,
No.443, Main Bazaar,
Virudhunagar ... Petitioner in W.P.(MD) No.20122 of 2014

M/s.Rasthe Garments,
Rep. by its Partner,
No.443 Main Bazaar,
Virudhunagar. ... Petitioner in W.P.(MD)No.20123 of 2014

M/s.V.R.Anbu & Bros,
Rep. by its Partner,
No.443 Main Bazaar,
Virudhunagar. ... Petitioner in W.P.(MD)No.20124 of 2014

-Vs-

1.The Joint Commissioner (CT),
Enforcement,
Tirunelveli.

2.The Assistant Commissioner (CT),
Tuticorin-III.

3.The Commercial Tax Officer,
Virudhunagar-I, Assessment Circle,
Virudhunagar. ... Respondents in all W.Ps.

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the second respondent in his proceedings in VSI-1, quash the Surprise Inspection Report dated 27.10.2014 issued therein.

For Petitioners : Mr.RL.Raman
Senior Counsel
For R1 to R3 : Mr.G.Arjunan
Government Advocate
(in all W.Ps)

COMMON ORDER

Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2.Though the petitions have been filed by three separate assessees, the issue raised in these writ petitions is one and the same.The petitioners want this Court to quash the impugned surprise inspection report.

3.The case of the petitioner is that on 24.10.2014, the first respondent along with a team of officers visited the petitioner's place of business and took their statements and also scrutinized their records. The respondents would claim that they came across certain serious discrepancies. Based on the same, the surprise inspection report was also made ready. To quash the same, these Writ Petitions have been filed.

4.No counter has been filed by the respondents.

5.The learned Senior counsel appearing for the petitioner submitted that Section 65(1) of TNVAT Act, 2006 would authorise certain prescribed officers to order production of accounts and also gave power of entry and inspection. Section 65(1) of the Act will have to be read along with Rule 20 of TNVAT Rules, 2007.

Section 65. Powers to order production of accounts and power of entry, inspection etc.-

(1) Any officer prescribed by the Government in this behalf may, for the purpose of this Act, require any dealer to produce before him the accounts, registers, records and other documents and to furnish any other information relating to his business.

"Rule 20. Power to inspect, compound offence etc-

Deputy Commercial Tax Officer, Commercial Tax Officer, Assistant Commissioner and Deputy Commissioner of Commercial Taxes Department are the officers prescribed under Sec.65"

6.The contention of the learned Senior Counsel appearing for the petitioners is that only the officers who have been named in Rule 20, can conduct inspection calling upon the petitioner to produce the records. The Joint Commissioner(CT) is not one of the officers specifically mentioned as prescribed officer in Rule 20. Therefore, the inspection conducted on the strength of the authorisation given by the first respondent is on the face of it illegal. The learned Senior Counsel drew my attention to the order dated 04.06.2019 made in W.A.No.1757 of 2019. The said case pertains to Section 64(4) of TNVAT Act, 2006. The said provision enabled the commissioner to order audit of the business of any registered dealer by an Officer not below the rank of Deputy Commissioner Tax Officer. But in the said case, pursuant to the delegation given by the commissioner, the joint commissioner had authorised the conducting of such audit. That was challenged in W.P.(MD)No.30098 of 2016. The Writ Petition was allowed vide order dated 26.07.2017. The same was challenged in W.A.No.1757 of 2019. Vide order dated 04.06.2019, the Writ Appeal was dismissed.

7.The learned Senior Counsel would state that this Court can apply an analogical reasoning and hold that in as much as the Joint Commissioner (CT) is not specifically named in Rule 20, any order for conducting inspection at his behest would not be legal.

8.I am unable to accept the aforesaid contention of the learned Senior Counsel. This is for more than one reason. Section 64(4) conferred power on the commissioner to order audit of the business of any registered dealer by an officer not below the particular rank.The Hon'ble Division Bench sustained the contention of the assessee that this power cannot be delegated to the Joint Commissioner. In fact, in the order of the Hon'ble Division Bench, it was observed in Paragraph No.2 that the learned Single Judge held that no individual order was given by the commissioner to direct such audit of the business of the dealers and that the joint commissioner, a lower authority, was not empowered to order any such audit of the particular business dealer, as there was no authorisation or delegation by the Commissioner possible in terms of Section 64(4) of the Act.

9.The case on hand is quite different. Rule 20 names certain officers. The Joint Commissioner obviously is an officer higher in rank. Therefore, I am of the view that conducting of inspection at the behest of an officer who is higher in rank to those named in Rule 20 will not vitiate the proceedings. In any event, the surprise inspection report by itself is not going to infringe the rights of the parties. It may be a material for the authorities to take further action. As and when any further action is taken, it is always open to the petitioner to defend themselves. On the ground set out in the affidavit filed in support of the writ petitions, I am not inclined to quash the surprise inspection report. These Writ Petitions are dismissed. I make it clear that all other contentions of the petitioners are left open. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Joint Commissioner (CT),
Enforcement,
Tirunelveli.

2.The Assistant Commissioner (CT),
Tuticorin-III.

3.The Commercial Tax Officer,
Virudhunagar-I, Assessment Circle,
Virudhunagar.

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-8545[F] dated 03/03/2021)

+1 CC to M/s.SPL GP (SR-8661[F] dated 04/03/2021)

W.P.(MD)Nos.20122 to 20124 of 2014
and
M.P.(MD)Nos.1,1 & 1 of 2014
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SSS(CO)
KB(24.03.2021) 4P 6C