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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2021

CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.15450, 15451, 15452, 15453, 15454,
16690, 16691, 16692, 16693 and 16694 of 2017
and
W.M.P.(MD)Nos.13293, 13294, 13295, 13296 and 13297 of 2017

Tvl. Rajalakshmi Oil Mill,
Represented by its Proprietrix,
K.N.Mahalakshmi. ... Petitioner in all WP'S

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Tallakulam Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. ... Respondents in all WP'S

Prayer in WP(MD). 15450/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus directing the 2nd respondent to rectify the error in his order in Assessment No.33524883028/2007-08 dated 28.03.2017 by considering the petitioners reply letters documents and the petitioners representation dated 27.06.2017.

Prayer in WP(MD). 15451/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus direction in the nature of writ directing the 2nd respondent to rectify the error in his order in assessment No.33524883028/ 2012-13 dated 28.03.2017 by considering the petitioners reply letters, documents and the petitioners representation dated 27.06.2017 and pass such further.

Prayer in WP(MD). 15452/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the 2nd respondent to rectify the error in his order in Assessment No.33524883028/2013-14 dated 28.03.2017 by considering the petitioners reply letters documents and the petitioners representation dated 27.06.2017.

Prayer in WP(MD). 15453/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus directing the 2nd respondent to rectify the error in his order in Assessment No.33524883028/2014-15 dated 28.03.2017 by considering the petitioners reply letters documents and the petitioners representation dated 27.06.2017.

Prayer in WP(MD). 15454/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus direction in the nature of writ directing the 2nd respondent to rectify the error in his order in assessment No.33524883028/ 2015-16 dated 28.03.2017 by considering the petitioners reply letters, documents and the petitioners representation dated 27.06.2017 and pass such further.

Prayer in WP(MD). 16690/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33524883028/2007-08 ante-dated as 11.08.2017 and quash the same.

Prayer in WP(MD). 16691/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33524883028/2012-13 ante-dated as 11.08.2017 and quash the same.

Prayer in WP(MD). 16692/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33524883028/2013-14 ante-dated as 11.08.2017 and quash the same.

Prayer in WP(MD). 16693/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33524883028/2014-

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15 ante-dated as 11.08.2017 and quash the same.

Prayer in WP(MD). 16694/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33524883028/2015-16 ante-dated as 11.08.2017 and quash the same.

For Petitioner : Mr.B.Rooban
For Mr.R.Veeramanikandan.

For Respondents : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.Tvl.Rajalakshmi Oil Mill is the writ petitioner in all these ten writ petitions. While five writ petitions have been filed in the nature of Writ of Mandamus, the other five writ petitions have been filed in the nature of Writ of Certiorari to question the adverse orders passed by the second respondent.

3.The petitioner is an assessee registered with the second respondent. The assessment years pertain to 2007-08, 2012-13, 2013-14, 2014-15 and 2015-16. The petitioner's assessments were concluded on deemed assessment basis under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner's place of business was inspected by the Enforcement Wing Officials on 14.10.2015. Certain defects were noticed. Based on the same, the assessing authority issued pre-revision notices on 16.02.2017. The petitioner was called upon to offer her objections. The petitioner had submitted letters seeking adjournments on more than one occasion. Subsequently, the petitioner also filed her objections on 06.05.2017. They were sent by registered post. However, in the meanwhile, the second respondent had already passed orders adverse to the petitioner on 28.03.2017. Those orders were however despatched by registered post to the petitioner only on 05.05.2017. Though there cannot any dispute that the said orders dated 28.03.2017 were passed even before receiving the petitioner's reply, the fact remains that no personal hearing was afforded to the petitioner. Probably, realizing the vulnerability of the orders dated 28.03.2017 on that ground, the assessing authority *suo motu* invoked his jurisdiction under Section 84 of the Tamil Nadu Value Added Tax Act and reopened the proceedings. Notice dated 09.05.2017 was issued in this regard.

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4.The petitioner submitted her reply dated 06.05.2017, seeking copies of certain documents relied in the assessment order. It appears that the petitioner's request was not accepted. Thereafter, the petitioner submitted her objections on 15.06.2017. The petitioner had also enclosed certain documents along with the objections. Thereafter, personal hearing was granted. The petitioner apprehended that her objections may not be considered and filed W.P.(MD)Nos.15450, 15451, 15452, 15453 and 15454 of 2017 for directing the assessing authority to pass orders in the light of her objections and the documents produced by her. The writ petitions were filed on 16.08.2017 and came up for admission on 18.08.2017. On the said date, the learned Government Counsel took notice and sought adjournment. The case was listed on 23.08.2017. On the said date also, the learned Government Counsel took adjournment. The impugned orders dated 11.08.2017 were despatched to the petitioner on the evening of 28.03.2017. Questioning the same, W.P.(MD) Nos.16690, 16691, 16692, 16693 and 16694 of 2017 came to be filed.

5.The respondents have filed a detailed counter affidavit controverting the stand taken by the writ petitioner. The learned Government Advocate took me through the averments set out therein. The learned Government Advocate in particular would emphasise the fact that the writ jurisdiction of this Court cannot be invoked, when alternative remedy is very much available to the petitioner.

6.I carefully considered the rival contentions and went through the materials on record.

7.Since the jurisdiction under Section 84 of Tamil Nadu Value Added Tax Act was suo motu invoked by the assessing authority himself, I must hold that the original orders of assessment dated 28.03.2017 automatically go. As I have already pointed out, the said orders were passed without granting personal hearing to the petitioner. On that ground, the orders were obviously vulnerable. To set the records straight, I deem it fit and appropriate to formally set aside the orders dated 28.03.2017, passed by the second respondent.

8.Now comes the question as to whether the impugned orders are sustainable or not. The core contention raised by the learned counsel for the petitioner is that the impugned orders are vitiated by pre-determination. The assessing authority has chosen to go by what transpired during the inspection by the Enforcement Wing Officials. This contention advanced by the petitioner's counsel is amply borne out by the text and language of the impugned orders. In the impugned orders, the assessing authority had stated that since he is a quasi-judicial authority, he will always issue revision notice only after thoroughly going through all the facts and defects pointed out in the inspection records. He had also stated that if every dealer is allowed to escape from suppression noted at the time of inspection, then such inspection will have no meaning at all.

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9.In the case on hand, one of the defects pertains to non-payment of tax by the other end dealer. In the decision reported in ***(2017) 99 VST 343 (JKM Graphics Solutions Vs. The Commercial Tax Officer)***, it was authoritatively laid down by the Madras High Court that in all such cases of mismatch, the enquiry must be conducted with the other end dealer also. But in the impugned order, it has been mentioned that it is the assessee, who must establish with proof that his seller has paid tax due to the Government. This kind of approach runs counter to what was laid down in JKM Graphics Solutions' case on 01.03.2017. The impugned orders were passed on 11.08.2017. The assessing authority in the impugned order has repeatedly harked back to what happened during the inspection. The assessing authority has chosen to even observe that willful suppression unearthed at the time of inspection automatically warrant levy of penalty.

10.Adopting such an approach has been deprecated by the Madras High Court in more than one case. In W.P.Nos.7784 and 7785 of 2007 (M/s.Amutha Metals Vs. The Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai), a learned Judge of this Court had held as follows:-

> *"If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts."*

11.Recently vide order dated 13.04.2018 in W.P.Nos.9026 to 9029 of 2018 (M/s.Sharoff Syndicate Vs. The Assistant Commissioner (CT), Mayiladuthurai-I Assessment Circle, Mayiladuthurai), a learned Judge of this Court held as follows:-

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"11. In my considered view, the said decision in the case of Yousuff Radio, is not applicable to the present proceedings for more than one reason. Firstly, the alleged admission of liability is not voluntary and it is not by an affidavit filed by the dealer before the Assessing Officer, but, it is a statement recorded by the officials of the Enforcement Wing during the course of inspection. The effect of such statement was considered by the Hon'ble Division Bench of this Court in the case of Madras Granites Private Limited Vs. CTO, Arisipalayam Assessment Circle, Salem [reported in (2006) 146 STC 642], in which, it has been held that it is settled that the Assessing Officer is a Quasi Judicial Officer and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities namely the officials of the Enforcement Wing."

12.I have no doubt whatsoever in my mind that the assessing authority has not at all dealt with the contentions and objections of the assessee. On the other hand, the assessee has been painted in uncharitable terms. This is evident from the employment of the following expressions:-

(a) "The assessee has no nerve"

(b) "The assessee repeatedly raised their objections dishonestly"

(c) "Throwing sand in the eyes of the Government"

The stand of the assessee has been summarily brushed aside with a single statement that all the copies of the record submitted by the assessee were verified and found to be incorrect and incomplete.

13.The approach adopted by the assessing officer cannot be said to be correct. The orders impugned in W.P.(MD)Nos.16690, 16691, 16692, 16693 and 16694 of 2017 are set aside and the matters are remitted to the file of the second respondent and the second respondent will issue one more personal hearing notice to the petitioner. The petitioner will not take adjournment on the date to be notified by the second respondent. The petitioner is permitted to file written statement and also additional records, if necessary. The second respondent will consider the same and pass orders in accordance with law.

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14.W.P.(MD)Nos.16690, 16691, 16692, 16693 and 16694 of 2017 are allowed on these terms. In view of the order passed in W.P.(MD) Nos.16690, 16691, 16692, 16693 and 16694 of 2017, W.P.(MD)Nos.15450, 15451, 15452, 15453 and 15454 of 2017 are closed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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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 Commercial Tax Officer,
Tallakulam Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020.

2CC'S TO MR. B.ROOBAN, ADVOCATE SR 12700 12701

W.P(MD)Nos.15450, 15451, 15452, 15453, 15454,
16690, 16691, 16692, 16693 and 16694 of 2017
19.03.2021

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