IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.13991, 13995, 14002, 14004, 14008, 14011 & 14015 of 2019
and
WMP.Nos.14033, 14034, 14041, 14042, 14050, 14052, 14057, 14058, 14063, 14064, 14067, 14068, 14070 & 14071 of 2019

W.P.No.13991 of 2019:

Tvl. Morbi Tiles Marketing,
Represented by its Proprietrix, Tmt.Chetna Patel,
No.1/157/1-A, Deivambigai Rice Mill Compound,
(Opposite to Vidhya Mandir School),
Salem – 636 004. ... Petitioner

Vs

The Assistant Commissioner (ST), FAC,
Leigh Bazaar Assessment Circle,
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN No.33562621548/2007-08 dated 12.02.2019 insofar as the assessment year 2007-08 is concerned and consequential proceedings in TIN No.33562621548/2007-08 dated nil and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and issue such further Writ, order or direction.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.R.Siddharth,

Government Advocate

COMMON ORDER

Heard Mr.Senniappan, learned counsel for the petitioner and Mr.Siddharth, learned Government Advocate for the respondents.

2.The impugned orders passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') relate to periods 2007-08 to 2013-14 and are challenged along with orders styled as 'notice' rejecting applications filed for rectification of defects under Section 84 of the Act.

3.The petitioner had admittedly filed returns for the periods in question that were deemed to have been accepted under Section 22(2) of the Act. There was an inspection by the enforcement wing of the Commercial Taxes Department on 19.05.2014 when certain defects appear to have been noticed by the authorities. Parallelly, and as per the prescribed procedure, proposals for assessment in Form VSI-3 were also forwarded to the Assessing Officer, by the enforcement officials, based upon the alleged defects located by them. It is a settled position in law that the proposals of the enforcement officer are only prima facie in nature, and intended to provide guidance to the Assessing Authority, and not to be adopted mechanically.

4.While this is so, the impugned order refers, from references 1 to 5 thereof, to the documentation in the enforcement file and in fact, the subject of the order is in itself *'VSI-3 orders passed regarding'*.

5.This leaves me in no doubt that the Assessing Authority has automatically and without application of mind proceeded to finalize the assessment based upon enforcement proposals only. The opportunity stated to have been provided is nothing but lip service, to make it appear as though the principles of natural justice have been adhered to.

6.The officer refers to a notice issued on 08.01.2016 calling for objections. A response was filed by the petitioner seeking 15 days time. No personal opportunity has been granted thereafter. The authority also does not confirm to the petitioner as to whether the request of the petitioner has been accepted or not. Both the aforesaid requirements, of personal opportunity as well as the requirement to fairly communicate to the assessee the decision of the officer on the request for additional time, are mandatory and have been reiterated as essential features in the principles of natural justice, in a series of circulars that have been issued to by the Commissioner of Commercial Taxes.

7.However, the proposals contained in notice dated 08.01.2016 have been arbitrarily confirmed vide impugned orders, based solely upon the enforcement proposals. The impugned orders of assessment are, in my view, vitiated by the violation of principles of natural justice and are thus, set aside.

8.Incidentally, it is to be noted that as far as the first defect is concerned, it deals with materials stated to have been obtained by the officer from the website of the Commercial Taxes Department and from Checkpost movement.

Admittedly, these materials have never been supplied to the petitioner. This issue had engaged the attention of this Court in several writ petitions and after a slew of orders passed in those writ petitions, the Commissioner has issued a Circular bearing No.5 dated 24.02.2021 where he sets out the detailed procedure to be followed by the officers in compliance with the principles of natural justice, in dealing with additions to turnover based on third party material.

9.As against the aforesaid assessment order, the petitioner filed applications seeking rectification on 19.12.2018. While the impugned orders are styled as 'notices' dated 12.02.2019, the Assessing Authority rejects the Section 84 applications, again without notice and merely stating that the petitions will not be entertained any further. Both the impugned orders of assessment as well as revision smack of arbitrariness and are entirely unacceptable. There has been no opportunity of hearing, let alone effective opportunity of hearing that has been offered by the officers.

10.Learned Government Advocate would request that the matter be remanded back to afford the Department another opportunity. I see no reason to entertain this request as an order of remand will not be passed by this Court for the mere asking.

11.The erring official in this case is seen to have been offered an opportunity to set right the defects in the assessment by the assessee by filing Section 84 application. At least, at that stage, he should have issued notice prior to passing of order. This has not been done. In such an instance, I am of the view that assessments relating to periods in excess of 15 years from today, must be allowed to attain finality at some stage or the other and that stage, in my view, is now.

12. These writ petitions are allowed and the impugned orders quashed. No costs. Connected miscellaneous petitions are closed.

kbs

23.06.2022

Index : Yes
Speaking Order

To

The Assistant Commissioner (ST), FAC,
Leigh Bazaar Assessment Circle,
Salem.

DR.ANITA SUMANTH, J.
kbs

W.P.Nos.13991 and batch

23.06.2022