



W.P.(MD)Nos.15388 & 18670 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2022

PRONOUNCED ON : 10.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD)Nos.15388 & 18670 of 2018
and WMP.(MD)Nos.13868 & 16516 of 2018

M/s.V.V.V.& Sons Edible Oils Ltd.,
Represented by its Director,
No.443, Bazaar,
Virudhunagar 626 001.

... Petitioner in both W.Ps.

VS.

1. The Principal Commissioner & Commissioner
of Commercial Taxes,
Ezhilagam, Chennai 600 005.

2.The Appellate Deputy Commissioner (CT)
Virudhunagar.

3.The Commercial Tax Officer -1,
Virudhunagar.

... Respondents in
W.P.No.15388 of 2018

The State Tax Officer-1,
Virudhunagar.

... Respondent in
W.P.No.18670 of 2018

Prayer in W.P.(MD)No.15388 of 2018: Petition filed under Article 226 of the



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Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to appoint a Joint Commissioner in the Commercial Taxes Department to consider the legality of the assessment orders passed by the second respondent relating to the assessment years TNVAT 2011-12, 2012-13 and 2013-14 following the D3 proposals issued by the Enforcement Wing and decide the issues in accordance with law.

Prayer in MD)No.18670 of 2018: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN:33175721640/2014-15 and quash the impugned pre-revision notice dated 6.7.2018.

In both the Cases

For Petitioner : M/s.R.L.Ramani
Senior Counsel
for Mr.S.Raja Jeyachandra Paul

For Respondents : M/s.Veerakathiravan, AAG
assisted by K.S.Selva Ganesan, AGP.

COMMON ORDER

In W.P.(MD).No.15388 of 2018, the petitioner has prayed for a writ of Mandamus to appoint a Joint Commissioner from the Commercial Taxes Department to consider the legality of the assessment orders passed by the third respondent relating to the assessment years Tamil Nadu Value Added Tax 2011-12, 2012-13 and 2013-14 respectively.



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2. In WP (MD) No.18670 of 2018, the petitioner has challenged the impugned proceeding of the State Tax Officer in his proceeding in TIN No. 33175721640 to quash the pre-reassessment Notice dated 6.7.2018.

3. By the impugned notice dated 6.7.2018 in TIN No.33175721640, the sole respondent – State Tax Officer has called upon the petitioner to reply to the said notice within 15 days. The said notice has been issued for Assessment Year 2012-13.

4. The petitioner's factory as also the petitioner's sister concern, V.R.Anbu and Brothers in which petitioner, Managing Director is a partner, they were visited by the officers from the Commercial Tax Department on 24.10.2014 and 25.10.2014. Statement from the Manager and General Manager were recorded based on the input and output ratio and based on the aforesaid statement, pre-revision notices dated 9.2.2015 were issued to the petitioner for these assessment years 2011-2012, 2012-2013 and 2013-2014 on 09.02.2015. Similar notices were also issued to the petitioner's sister concern namely, Assessment Orders. Later Assessment Order passed by the Commercial Tax Officer for the Assessment Years 2013-14, 2014-15. It is



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the subject matter of W.P.Nos.21894 & 21895 of 2022. A separate order is being passed in the above said writ petitions. The petitioner also replied to the pre-revision notices on 12.03.2015, which culminated in assessment orders, dated 31.08.2015 for these three assessment years.

5. Aggrieved by these Assessment Orders, the petitioner had filed W.P. (MD).Nos.20162 to 20164 of 2015 before this Court. These writ petitions were dismissed by a learned Single Judge of this Court vide Common Order dated 06.11.2015 by directing the petitioner to file a statutory appeal within a period of four weeks from the date of receipt of copy of the aforesaid order.

6. Aggrieved by the aforesaid order, the petitioner filed W.A. (MD).Nos.1372 to 1374 of 2015 before the Division Bench of this Court. These writ appeals were disposed of by directing the petitioner to comply with the following observations:

“(i) The appellant shall file statutory appeals within a period of four weeks from the date of receipt of a copy of this judgment, along with 25% of the tax demanded under the impugned assessment orders;

(ii) Upon filing of such appeals, together with 25% of the tax demanded, the appellate authority



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shall deal with the appeals independently with reference to the facts as well as law and dispose of them within further period of three months; and

(iii) Till then, the appellant shall have the benefit of an order of interim stay of the demand in respect of the remaining portions.”

7. While passing the aforesaid order, the Division Bench recorded submission of the petitioner regarding the alleged conduct of the respondents.

Paragraph 8, which reads as under:

“8. However it is the contention of the learned Senior Counsel for the appellant that the orders of assessment passed by the respondent, are completely bereft of any application of mind and the manner in which he had dealt with the objections, speaks volumes about the mala fide intention on the part of the Assessing Officer. The learned Senior Counsel drew our attention to some of the observations made by the Assessing Officer in the orders of assessment.”

8. Aggrieved by the aforesaid order of the Division Bench, the petitioner preferred SLP (C) Nos.4609 to 4611 of 2011 along with another Writ petition in W.P.(C) 91 of 2015, wherein the petitioner challenged the vires under Sections 51 and 58 of the Tamil Nadu Value Added Tax Act, 2006 requiring pre-deposit of tax as a condition to file appeal before the Appellate Authority. As far as challenge to the vires of Sections 51 and 58



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of the Tamil Nadu Value Added Tax Act was concerned, it was filed in tune with the challenges made by other assesseees under different VAT enactments from different High Courts. W.P.(C)No.91 of 2015 was withdrawn with liberty to the petitioner to approach the jurisdictional High Court to challenge the constitutional validity. As far as the appeals arising out of common order of the Division Bench, dated 18.12.2015 in W.A.(MD).Nos.1372 to 1374 of 2015 is concerned, SLP (C) Nos.4609 to 4611 of 2016 were disposed with the following observation vide order dated 27.09.2016.

“Having heard learned counsel for the parties, we are of the considered opinion that the petitioner should approach the statutory authority under Section 58 of Tamil Nadu Value Added Tax Act, 2006. If the appeal is preferred within a period of six weeks hence, the appellate authority shall deal with the appeal on merits and not to reject the same on the ground of limitation at threshold.

The special leave petitions are, accordingly, disposed of.”

9. During the intergennum, the petitioner was required to file statutory appeal within a period of six weeks from the date of receipt of copy of the order of the Hon’ble Supreme Court. The petitioner also appears to have filed an appeal in time before the expiry of six weeks granted by the Hon’ble



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Supreme Court.

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10. During the interregnum, the department appears to have initiated recovery proceedings for the balance amount as only 25% was deposited by the petitioner, pursuant to the directions of the Division Bench as modified by the Hon'ble Supreme Court. This was a subject matter of W.P.(MD).No. 2751 of 2017 before this Court. The learned Single Judge of this Court quashed the recovery proceedings vide order dated 17.02.2017 in W.P. (MD)No.2751 of 2017. While quashing the recovery notice, the learned Single Judge of this Court directed the appellate authority to pass orders within a period of three months as stipulated by the Division Bench of this Court by an order, dated 18.12.2015 in W.A.(MD).Nos.1372 to 1374 of 2015. The relevant portion from the said order reads as under:

"11.The said time period has not been worked out in view of the Special Leave petition filed by the petitioner before the Hon'ble Apex Court, where final orders were passed on 27.09.2016, wherein it has been given six weeks time to approach the authority with a rider meaning that if such appeals are not filed within such time, the time shall not be extended beyond that. In pursuant to the same, appeals were filed along with 25% amount demanded and the appeals were also entertained by the appellate



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authority. Therefore, the four weeks time given by the Division Bench through order dated 18.12.2015 has now been modified or extended by six weeks time either from the date of the order of the Hon'ble Apex Court or from the date of receipt of copy of the order from the Hon'ble Apex Court. At any rate, the appeals have been filed and entertained. Therefore, it shall be construed that the appeals have been filed within six weeks as has been directed by the Hon'ble Supreme Court. Once the appeals have been entertained now the only limitation left is three month outer time limit as given in the order dated 18.12.2015, within which the appeals shall be disposed of by the appellate authority. That is the reason why the appellate authority, as informed by the learned Senior Counsel appearing for the petitioner, has fixed the date of hearing on 20.02.2017. Therefore, within the three months time stipulated in the said order of the Division Bench, the appeals would be expeditiously considered and decided. In view of the time stipulation, it has to be scrupulously followed by the petitioner as well the appellate authority are concerned. But, a different interpretation is sought to be given by the respondent. Therefore, the impugned order is totally against the spirit of the two orders, one passed by the Hon'ble Division Bench of this Court and the another one passed by the Hon'ble Apex Court cited supra. Therefore, this Court is of the considered view that the impugned order totally runs contra to the imports of the directions of this Court dated 18.12.2015, as well the Hon'ble Apex Court order dated 27.09.2016 referred to above. In that view of the matter, the impugned order is liable to be interfered with. Accordingly, it is quashed.

12.Resultantly, the impugned order is quashed and the writ petition is allowed. However, it is made



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clear that the petitioner shall co-operate with the appellate authority in deciding the appeals within the said period of three months as stipulated by the Division Bench of this Court by order dated 18.12.2015. It is needless to mention that the petitioner shall abide by whatever decision be made by the appellate authority, who decides the appeal on merits.”

11. The learned Senior Counsel for the petitioner submits that after the appeals were filed, the cases were also heard at length and the petitioner had also filed written submissions in Appeal Nos.1, 2 and 3 of 2017. Despite the case being heard on several occasions and filing the written submissions on either side, no orders have been passed.

12. Under these circumstances, the petitioner approached the 1st respondent, the Principal Commissioner & Commissioner of Commercial Tax with a request for appointment of Joint Commissioner to consider the legality or otherwise of the assessment orders passed by the third respondent in respect of these assessment years in line with the orders passed in the case of Madras Cements Limited, dated 22.06.2013. The learned Senior Counsel for the petitioner has drawn attention to the order passed on merits, pursuant to appointment of arbitrator in the case of Madras Cements Limited, vide order dated 22.06.2013 in its proceedings No.A/11/5422/3/2012. The learned



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Senior Counsel for the petitioner also drawn attention to the following

portion:

“On having found that the objection are acceptable, the Assistant Commissioner (CT)-III, Virudhunagar has submitted the proposal to deviate the V3 report to the then Joint Commissioner(CT)(Enf.,) Tirunelveli Division in the reference 2nd cited. The then Joint Commissioner (CT)(Enf.,) Tirunelveli in the reference 3rd cited has rejected the deviation proposal submitted by the Assistant Commissioner (CT)-III, Virudhunagar. In this circumstances, the dealer have filed the arbitration petition to arbitrate the “V3” proposal in their reference 4th cited.”

13. The learned Senior Counsel for the petitioner drawn attention to similar relief granted partially by a Division Bench of this Court in W.A.Nos. 255 and 256 of 2006 vide order, dated 03.08.2006 in the case of M/s.V.V.Vanniaperumal & Sons. The learned Senior Counsel for the petitioner further submits that though such relief was granted since the demand was dropped it was not proceeded further. As far as the limitation is concerned, the learned Senior Counsel for the petitioner has relied on the following three cases:

(i) The Commissioner, Karnataka Housing Board Vs C.Muddaiah reported in **(2007) 7 SCC 689**. Relevant portion from the order reads as under:

“31. We are of the considered opinion that once a direction is issued by a competent Court, it



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has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

(ii) State of Tamil Nadu and others Vs T.Ranganathan and others of this High Court reported in **2010 2 LW 273**. Relevant portion from the order reads as under:

21. It is well settled in law that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. If on any reason the time fixed by the competent Court is unable to be adhered to and the proceedings are unable to be finalised, the party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court/Tribunal would extend the time, depending upon the facts and circumstances of the case. Admittedly the said procedure has not been followed in this case and the department has chosen to ignore the direction



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given by the Tribunal, which is binding on them.

22. (a) *Similar issue arose before the Honourable Supreme Court in S.L.P.No.2103 of 1987 and the Supreme Court considering the time fixed in similar case, refused to grant permission to continue with the disciplinary proceeding, even though in the said case, factually after the retirement of the person concerned. The operative portion of the order dated 1.9.1989 reads as follows:*

"The Central Administrative Tribunal, Allahabad Bench by its order dated 1.8.86 directed:

"In the result we order that the disciplinary case against the petitioner, charge sheet for which was given to him on 22.9.83 i.e., more than two years back should be finalised within a period of six months and depending on the results of the same and pending dues, promotion if any and any of the reliefs that he has asked and to which he becomes eligible may be given to him within a month thereafter including reimbursement of expenditure for attending the enquiry after his retirement. The administration will keep in mind the delays in payments made to him and any interest charges that may become due on account of delayed payments for which he is not responsible may also be paid to him at the rate of 15% per annum"

Then direction of the Tribunal in this special leave petition has not been stayed, and therefore, remained operative. As the steps envisaged in the order of the Tribunal were not completed and the respondents wanted the benefit



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under the order of the Tribunal, the Administration was called upon to finalise the proceedings. It is stated that on 5.5.88 a cut in the pension to the extent of 30% was recommended and the recommendation has remained with the appropriate authorities for more than a year and three months to be dealt with one way or the other. Several adjournments were granted in this court to get the finalisation of the proceedings and in spite of repeated adjournments on each adjourned date the counsel for the Union of India has been stating that the matter would soon be finalised.

When the matter is taken up today, counsel for the Union of India still indicates that no final orders have been obtained.

We find that the tribunal has not quantified the claims of the employee. In the circumstances, it is difficult for us to indicate what exactly are the dues to which he has become entitled. The matter shall go back to the Tribunal for computation of the exact dues and the Tribunal is directed to do the same within three months from today, if necessary after hearing the parties.

In view of the fact that mandatory direction of the Tribunal that the disciplinary proceedings which were then pending should be completed within six months and more than three years and one month have passed by now and the proceedings have not been completed, we quash the proceedings. An employee after retirement cannot be harassed by continuing a disciplinary action of this nature. The Tribunal while disposing of the matter had taken note of the fact that the proceedings had been initiated after the retirement and more than two years had passed by



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then and yet it had not been finalised. Taking that aspect into consideration, the direction to complete the proceedings within six months had been given. This should have been sufficient warning to the administration for early disposal of the proceedings. This is why justice demands the quashing the proceedings. There will be no order as to costs." (Emphasis Supplied)

(b) One of us (N.Paul Vasanthakumar,J.) had an occasion to consider similar issue in the decision reported in (2006) 2 MLJ 143 (Dr.N.Shahida Begum v. State of Tamil Nadu) and in W.P.No.31317 of 2004, etc., order dated 12.12.2008 (M.Xavier v. State of Tamil Nadu & Another) and allowed similar prayers and held that after expiry of the time, without extension of time granted by the Tribunal, the proceedings cannot be continued.

(c) In the Division Bench judgment reported in (2008) 4 MLJ 776 (B.Krishnan v. T.N.Water Supply & Drainage Board), presided over by one of us (Elipe Dharma Rao,J.), similar issue was considered as to whether the department can proceed further if the enquiry was not completed within the stipulated time in spite of rejection of the petition seeking extension of time. It is held therein that the department cannot proceed further as the time limit granted originally and extended subsequently, got expired. Paragraphs 6 and 7 of the said Judgment can be usefully referred to which read as follows:

"6. Heard the learned counsel for both sides and perused the records. It is clear that when the petitioner was working as an Executive Engineer at Ooty, on the basis of the audit report for the year 1981-82 to 1987-88, disciplinary



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proceedings were initiated and he was placed under suspension on 02.09.1988 for the irregularities committed by him. When they failed to complete the enquiry, he approached this Court by filing W.P.No.19276 of 1992 and it was disposed of with a direction to complete the enquiry within a period of three months and when it was not complied with, a petition for extension of time was filed and the same was rejected, directing to reinstate him. Thereafter, he was reinstated by order dated 12.03.1993 as Deputy Superintending Engineer. After lapse of two years, when his retirement was due on 31.05.1995, the respondents revived the proceedings and placed him under suspension on 29.05.1995. Simultaneously another order was issued not permitting him to retire in view of the criminal investigation by Directorate of Vigilance & Anti-corruption. One Enquiry Officer was appointed on 30.11.1996 but orders were not passed. Hence, he was constrained to file W.P.No.1247 of 1996 and this Court granted time to complete the enquiry within three months, which was not complied with. Thereafter, time was extended to pass a final order on the ground that enquiry shall be completed within one month. Even then no orders were passed and the second Enquiry Officer was appointed and when further time was prayed, this Court has refused to grant the same. Therefore, when once the Court has refused to extend the time for completion of enquiry, the petitioner filed the contempt petition for non-compliance of the order dated 26.11.1997 passed in the miscellaneous petition filed in W.P.No.1247 of 1996. The learned Judge, while closing the contempt petition, allowed the writ petitioner to peruse the records and submit his explanation within the period as stated in para 11 of the



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affidavit and the respondents are directed to pass a final order.

7. Accordingly, the respondents passed the impugned order, which, in our considered view, is without any authority and is liable to be set aside on the ground that when this Court refused to extend the time for completing the enquiry for the alleged irregularities committed by him during the period from 1981-82 to 1987-88 when he was working as Executive Engineer, Ooty (on the basis of the audit report) and by virtue of the orders passed by this Court, he was reinstated and even though time was granted to complete the enquiry, they failed to complete the same."

(d) Before the Division Bench of the Bombay High Court also similar issue was raised and the Division Bench in the decision reported in 2005 (2) LLJ 607 (Ramrao Ramachandra Datir v. State of Maharashtra) held that the department cannot proceed further with the charge memo. In paragraphs 6 to 8 it is held thus,

"6. In the instant case, it is not in dispute that the first charge-sheet dated March 10, 1986 consisted of eight charges. The petitioner has challenged the validity of the same in Writ Petition No.598 of 1986 and this Court on March 24, 1986 permitted the petitioner to withdraw the petition by specifically observing that the enquiry should be completed and the report to be submitted not later than June 15, 1986. The application for extension of time to complete the enquiry was dismissed vide order dated August 14, 1986. On the backdrop of these undisputed facts, it was incumbent on the respondent to complete the enquiry and submit the report of



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such enquiry on or before June 15, 1986. Since the respondent failed to complete the enquiry within the stipulated period, the right to proceed with the enquiry after June 15, 1986 came to an end, consequently, the enquiry so initiated vide charge-sheet dated March 10, 1986 stands vitiated after June 15, 1986.

7. In the instant case, the respondents have evolved a novel method for conducting the departmental enquiry against the petitioner by issuing fresh charge-sheet dated August 9, 1988 wherein the alleged charges which are framed against the petitioner are totally identical with that of the charges framed in earlier charge-sheet dated March 10, 1986 and the misconduct which is alleged is also the same, which was part and parcel of the earlier charge-sheet dated March 10, 1986. The fact that the charges are identical in nature is not disputed by the respondent. Similarly, the list of documents and list of witnesses relied on by the respondent for proving the charges in the second charge-sheet are also identical in nature with that of relied on by the respondent for first charge-sheet dated March 10, 1986. On the backdrop of the above referred facts, it is evident that the respondent, by virtue of this exercise, wants to reopen the case of departmental enquiry against the petitioner on the same set of facts and for the same misconduct which, in our considered view, is not permissible in law.

8. As we have already observed hereinabove, after June 15, 1986, the respondent lost the legal right to proceed with the departmental enquiry against the petitioner by virtue of the specific order dated March 24, 1986 passed by this Court in Writ Petition No.598 of 1986 and therefore, the question of starting new



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enquiry by fresh charge-sheet dated March 9, 1988 on the same set of charges and for the same misconduct, does not arise."

(e) The Honourable Supreme Court in the decision reported in 2007 (6) Supreme 97 (The Commissioner, Karnataka Housing Board v. C.Muddaiah) held that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. In paragraph 31 it is held thus,

"31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

23. We are conscious of the fact that if there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency it is for the Department to point out the non-co-operation on the part of the delinquent officer in finalising the proceeding and the



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hardships faced by the Department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003”.

(iii) **Mainderjit Singh Bitta Vs Union of India and others** reported in **(2012) 1 SCC 273**. The relevant portion from the order reads as under:

10. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The Government Departments are no exception to it. The departments or instrumentalities of the State must act



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expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the Government Department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the concerned party to undermine the authority of the courts, its dignity and the administration of justice. In the case of Re: Vinay Chandra Mishra [(1995) 2 SCC 584], this Court held that 'judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the Courts have to be respected and protected at all costs.

14. As far as the second writ petition in W.P.(MD).No.18670 of 2018 is concerned, it is submitted that since an arbitrator has not been appointed and therefore the impugned notice is unsustainable. It is submitted



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that demand cannot be based on hypothetical basis by relying on the statement of Manager and General Manager of the petitioner. It is submitted that in the absence of any evidence to show that any clandestine removal of manufacturing edible oil by the petitioner or receipt of any consideration question of demanding tax or making proposal does not arise. Therefore, the aforesaid writ petition challenging the assessment notice, dated 06.07.2018 for the assessment year 2014-2015 is liable to be quashed.

15. Opposing the prayer, the learned AAG for the respondents it is submitted that as far as the W.P.(MD).No.18670 of 2018 is concerned, it is pre-mature and is liable to be dismissed. As far as the appointment of the arbitrator is concerned, it is submitted that even prior to filing the present writ petition, the decision has been taken as early as 24.07.2018, vide letter bearing reference MM3/7334/2016. Therefore, the Commissioner of Commercial Tax Department cannot appoint an arbitrator in this matter. The learned AAG for the respondents also submits that there is no provision under the Tamil Nadu Value Added Tax Act, 2006 for the appointment of the arbitrator to look into the issue. That apart, it is submitted that in the case of Madras Cements Limited, which was cited by the learned counsel for the



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petitioner, there was a deviation and therefore, the arbitrator was appointed.

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16. Finally, the learned AAG for the respondents submitted that the petitioner had obtained an interim order, from this Court on 25.07.2018 and thereby stalled the disposal of the appeal. Therefore, the respondents cannot be blamed for the delay in passing the order. That apart, it is submitted that the decision cited by the learned Senior Counsel for the petitioner on the question of limitation cannot be considered in a writ petition filed for a Mandamus for a direction to appoint an arbitrator. Therefore, he prays for dismissal of the writ petitions.

17. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Additional Advocate General and Additional Government Pleader for the respondents.

18. The question of appointment of Joint Commissioner from the Commercial Tax Department to consider the legality of the Assessment Orders passed by the third respondent therein namely, the Commercial Tax Officer for the Assessment Years 2011 - 2012, 2012 - 2013 and 2013 - 2014



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respectively, cannot be countenanced in the light of the fact that the issue has

travelled up to the Hon'ble Supreme Court.

19. That apart, the petitioner's appeals were pending before the second respondent/Appellate Deputy Commissioner. Further orders may have been passed during the pendency of the appeal before the Hon'ble Supreme Court by the Appellate Deputy Commissioner inasmuch as the Hon'ble Supreme Court while dismissing the appeal filed by the petitioner against the order of the Division Bench, vide its order dated 18.12.2015 in W.A.(MD).Nos.1372 to 1374 of 2015 had affirmed the decision of the learned Single Judge in W.P.No.(MD).Nos.20162 to 20164 of 2015, vide order dated 06.11.2015 and had granted liberty to the petitioner to file a statutory appeal under Section 58 of the Tamil Nadu Value Added Tax Act, 2006. Section 58 deals with appeal before the Appellate Tribunal as is evident from a reading of Section 58 of the Tamil Nadu Value Added Tax Act, 2006, same is reproduced as under:

"Appeal to Appellate Tribunal.--(1) Any officer prescribed by the Government or any person objecting to an order passed by the Appellate [Deputy] Commissioner under sub-section (3) of section 51, or



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by the Appellate 1 [Joint] Commissioner under sub-section (3) of section 52, or by the 1 [Joint] Commissioner under sub-section (1) of section 53, may,--

(a) within a period of one hundred and twenty days, in the case of an officer so prescribed by Government.

(b) within a period of sixty days, in the case of any other person, from the date on which the order was served, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may, within a further period of one hundred and twenty days in the case of an officer prescribed by Government and sixty days in the case of any other person, admit an appeal presented after the expiration of the first mentioned period of one hundred and twenty days or sixty days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that no appeal filed by any person objecting to an order passed,--

(a) under sub-section (3) of section 51 or under sub-section (3) of section 52 shall be entertained unless it is accompanied by satisfactory proof of the payment of the tax as ordered by the Appellate 1 [Deputy] Commissioner or by the Appellate 1 [Joint] Commissioner, as the case may be;

(b) under sub-section (1) of section 53, unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax ordered by the 1 [Joint] Commissioner under section 53 and the tax admitted by the appellant:



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Provided also that no appeal shall be admitted against an order, passed by the Appellate 1 [Deputy] Commissioner under section 51 or by the Appellate 1 [Joint] Commissioner under section 52, as the case may be, setting aside the assessment and directing the assessing authority to make a fresh assessment.

(2) The officer empowered under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal has been preferred under subsection (1) by the other party, may file within sixty days of the receipt of the notice, a memorandum of cross objections and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1):

Provided that the Appellate Tribunal may, within a further period of thirty days, admit a memorandum of cross-objections filed after the expiration of the first mentioned period of sixty days, if it is satisfied that the officer empowered under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, had sufficient cause for not filing the memorandum within the first mentioned period.

(3) The appeal and the memorandum of cross-objections shall be in the prescribed form and shall be verified in the prescribed manner and the appeal shall be accompanied by such fee as may be prescribed:

Provided that no fee shall be payable by the officer empowered under sub-section (1).

(4) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard, and for sufficient reasons to be recorded in writing -

(a) in the case of an order of assessment –

(i) confirm, reduce, enhance, restore fully or partially,



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as the case may be, or annul the assessment or the penalty or both; or

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order: Provided that at the hearing of any appeal against an order of the Appellate 1 [Deputy] Commissioner or the Appellate 1 [Joint] Commissioner or the 1 [Joint] Commissioner, the Government shall have the right to be heard by a representative:

Provided further that if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an appeal to the Supreme Court against the order of the High Court is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of.

(5) Within a period of sixty days from the date of receipt of notice that an appeal against the order passed by the Appellate 1 [Deputy] Commissioner under sub-section (3) of section 51 or an order passed by the Appellate 1 [Joint] Commissioner under sub-section (3) of section 52 or by the 1 [Joint] Commissioner under sub-section (1) of section 53 has been filed, any assessing authority or his representative appearing before the Appellate Tribunal may file an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, in the prescribed form and in the prescribed manner against the order of the Appellate 1 [Deputy] Commissioner or the Appellate 1 [Joint] Commissioner or the 1 [Joint]



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Commissioner, as the case may be. The Appellate Tribunal may, after giving a reasonable opportunity to the appellant and assessing authority or the representative of the assessing authority of being heard, pass such orders on the petition, as it thinks fit:

Provided that the Appellate Tribunal may admit an enhancement petition or a petition for restoration of the assessment or penalty or both, fully or partially, as the case may be, presented after the expiration of the said period, if it is satisfied that the assessing authority or his representative had sufficient cause for not filing such petition within such period.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that, in the case of an appeal against an order passed by the 1 [Joint] Commissioner under sub-section (1) of section 53, the Appellate Tribunal may, in its discretion, give such direction as it thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed.

(7) (a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made:

Provided that no such application shall be preferred more than once in respect of the same order.

(b) The application for review shall be preferred in the



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prescribed manner and within one year from the date of which a copy of the order to which the application relates was served on the applicant in the manner prescribed and where the application is preferred by any party other than a departmental authority, it shall be accompanied by such fee as may be prescribed.

(8) Except as provided in the rules made under this Act, the Appellate Tribunal shall not have power to award costs to either of the parties to the appeal or review.

(9) Every order passed by the Appellate Tribunal under sub-section (4) or (7) shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred, the Deputy Commissioner if he is not such authority, and the Commissioner.

(10) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of sub-section (7) and section 60, be final.”

20. That apart, the provisions of the Tamil Nadu Value Added Tax Act, 2006 also does not contemplate appointment of the Joint Commissioner or any other Officer from the Commercial Tax Department as an arbitrator to decide the legality of the Assessment Orders or Revision Notice which are the subject matter of appeal before the Appellate Commissioner or by the Appellate Tribunal as the case may be.



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21. That apart, the petitioner did not comply with the order of the Division Bench in W.A.(MD).Nos.1372 to 1374 of 2015 dated 18.12.2015. Instead had approached the Hon'ble Supreme Court by filing S.L.P. (C).Nos. 4609 to 4611 of 2016 along with W.P.No.91 of 2015 which was disposed on 27.09.2016.

22. The decision of the Hon'ble Supreme Court and that of this High Court cited by the learned Senior Counsel for the petitioner in the context of Service Law also cannot be applied in the taxing enactments particularly where no prejudice was caused to the petitioner on account of the purported delay. Delay if any, was not attributable to the department.

23. In fact, in the case of the Petitioner's sister concern M/s.V.R.Anbu and Brothers in W.P.(MD).Nos.21894 and 21895 of 2019, a separate order is being passed wherein, a similar relief was sought is being rejected. Therefore, there is no merits in W.P.(MD).No.15388 of 2018.



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24. Therefore, the challenge to the Pre-Revision Notice dated 06.07.2018 impugned in W.P.(MD).No.18670 of 2018 for the Assessment Year 2014 to 2015 for the subsequent Assessment also without merits.

25. The impugned notice has relied upon the inspection by the enforcement being officers on 24.10.2014 and 25.10.2014. Serious allegations have been leveled against the petitioner in the said notice. It is for the petitioner to reply to the same to distance itself from the proposals contained therein, in such proceedings. Proceedings initiated under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006 cannot be scuttled.

26. Therefore, I do not find any merits in these writ petitions as well. These writ petitions are also therefore liable to be dismissed.

27. However, liberty is given to the petitioner to file a detailed reply to such impugned Pre-Revision Notice dated 06.07.2018 and proceedings bearing reference No.TIN:33175721640/2014-2015, within a period of thirty



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days from the date of receipt of a copy of this order.

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28. On such reply being filed before the State Tax Officer, the respondent in W.P.(MD).No.18670 of 2018 shall proceed to pass appropriate orders on merits and in accordance with law. Needless to state that the aforesaid order shall be passed as expeditiously as possible after hearing the petitioner, preferably, within a period of six months from the date of receipt of a copy this order.

29. These writ petitions stand dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

10.06.2022

Index : Yes/No
Internet : Yes/No
kkd



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To

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1. The Principal Commissioner & Commissioner
of Commercial Taxes,
Ezhilagam, Chennai 600 005.
2. The Appellate Deputy Commissioner (CT)
Virudhunagar.
3. The Commercial Tax Officer -1,
Virudhunagar.
4. The State Tax Officer-1,
Virudhunagar.



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C.SARAVANAN, J.

sn/rgm/kkd

Pre-delivery Common Order in
W.P(MD).Nos.15388
and 18670 of 2018

10.06.2022