



WEB COPY



W.P.Nos.5158 to 5162 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.5158,5159,5160,5161 & 5162 of 2020
and W.M.P.Nos.6087,6089,6091 to 6093 of 2020,
3796 to 3798, 3800 & 3802 of 2021

M/s.Pushkar Properties Private Limited
Rep. By its Director, P.Kruthivas,
No.3/51, Flat No.1-A, 2nd Main Road,
Anna Nagar East, Chennai – 600 102.

.. Petitioner
in all WPs

VS

The State Tax Officer,
Amaindakarai Assessment Circle
O/o. The Assistant Commissioner (ST)
Amaindakarai Assessment Circle,
No.F-50, 2nd Floor, First Avenue
Anna Nagar East, Chennai – 600 102.

.. Respondent
in all WPs

Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the respondent in TIN. 33511023840/ 2009-10, 2010-11, 2011-12, 2012-13, 2013 -14 dated 30.12.2019 and quash the same as illegal against the principles of natural justice and fair play and contrary to law and facts and direct the respondent to consider the objection independently without being influenced from the proposal received from the enforcement authority.



W.P.Nos.5158 to 5162 of 2020

For Petitioner : Mr.T.Pramod Kumar Chopda
Senior Counsel
for Ms.P.Aruna Chopda
(in all writ petitions)

For Respondent : Ms.Amrita Dinakaran
Government Advocate
(in all writ petitions)

COMMON ORDER

This is a batch of five writ petitions challenging orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax, 2006 (in short, 'the Act') for the period 2009 – 2010 to 2013 – 2014.

2. The petitioner is a dealer under the provisions of the Act, a civil work contractor. Monthly returns have been filed in respect of the periods in question. The stand taken by the petitioner therein for arriving at the turnover is based on purchases effected. This is an accepted *modus operandi* for arriving at the turnover in the cases of civil works contractors, since several projects would run simultaneously for different periods of time. Hence one of the methods that is accepted both by Industry as well as by the Commercial Taxes Department is to arrive at the turnover based on the purchases made in the relevant period of assessment to which an acceptable Gross Profit (GP) is added.



W.P.Nos.5158 to 5162 of 2020

WEB COPY

3. The petitioner's place of business was subject to inspection by the Enforcement Wing of the Department on 17.07.2015 wherein it was ascertained that the rate of G.P. added was 10 – 11% on the purchases made. The Enforcement Wing was of the opinion that this modus operandi is incorrect and required re-consideration by adding gross profit of the respective years as per Profit and Loss (P&L) accounts and on the basis of the audited financials.

4. To be noted, that the petitioner has, for the purposes of direct taxes, been following the completed contract method in terms of which Gross Profit has appreciated from year to year based on the quantum of work completed for the relevant year and the profit at the end of the contract period offered to tax. For the purpose of direct taxes, however, the petitioner has chosen to follow the methodology for arriving at deemed sales turnover on the basis of a realistic gross profit.

5. This did not find acceptance by the Enforcement Wing of the Department, that was of the view that the gross profit as

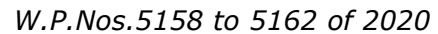


W.P.Nos.5158 to 5162 of 2020

revealed in the audited profit in the profit and loss account must be adopted for the purposes of sales tax as well. In opining thus, the Commercial Taxes authority appears to have missed the position that, per income-tax, the gross profit was being computed on completed contract method.

6. On the aspect of procedure, a notice was issued on 26.04.2016 proposing a variation to the computation of turnover as noticed in the preceding paragraphs. The petitioner objected by way of reply. Upon change of Officer, a revised second notice was issued on 07.02.2019 to which also, a response was issued. There was yet again a change in Officer and notices were sent on 19.02.2019 and 25.02.2019, to which replies were sent by the petitioner. All three Officers have proceeded on the basis that the rate of GP should be as adopted in the Income-tax proceedings, varying at rates between 19 to 31%.

7. While this is so, and it would have been appropriate for the officer who was third and last in the series of Assessing Officers to hear the petitioner and pass an order, it is the second officer who issued notice on 07.02.2019, who passed the impugned order on 30.12.2019, confirming the pre assessment proposal. It is



batch

batch

batch

batch



W.P.Nos.5158 to 5162 of 2020

Division Bench in W.A.No.4073 of 2019 dated 06.12.2019 setting out the proposition that it is not mandatory statutorily, for an opportunity of hearing to be afforded in matters of revision of assessment under Section 27 of the Act.

11. Having heard the learned counsel, my decision is as follows. Adverting to the aspect of procedure first, while it might be true that it was the second officer who had been the proper officer holding jurisdiction, to have passed the impugned order, I do not agree with the respondent that he could have dispensed with necessity for personal hearing.

12. Undoubtedly, Section 27 does not provide or mandate an opportunity of personal hearing as does the proviso to Section 22(4). There is thus a statutory difference. However, in all matters where the issue that arises for consideration requires a deliberation between the parties, it is incumbent upon the Officer to have called upon the petitioner to explain its stand.

13. The issue in this case relates to adoption of Gross Profit, whether at 10 – 11 % as put forth by the petitioner, or at the rate proposed by the Officers. There are any number of



W.P.Nos.5158 to 5162 of 2020

submissions that could have been put forth by the petitioner in support of the rate propounded by it, persuade to the Assessing Officer, had only such opportunity been granted.

14. In fact, even in the case relied on by the respondent, the learned Judge notes this possibility at paragraph 34 where he states that such necessity for a personal hearing would only be if the Assessing authority considered it expedient. In my categorical view, this is a case where such hearing is indeed expedient.

15. The petitioner, in its wisdom and based on trade practice, has adopted a certain rate of GP and it is in my view, not appropriate for the Assessing Officer to have adopted a substantially higher rate, without affording the petitioner an opportunity to explain the rates adopted by it.

16. In fact, the conclusion in the impugned orders, is that no materials were provided by the petitioner in support of the G.P. adopted by it. Such failure is a direct consequence of the failure of the authority to have granted an opportunity to the petitioner. For the aforesaid reason, I am of the view that the impugned orders suffer from a serious and fatal infirmity.



W.P.Nos.5158 to 5162 of 2020

WEB COPY

17. That apart, it is a settled position that the reports of the officials of the Enforcement Wing cannot be adopted mutatis mutandis by the Assessing Officer who are expected to apply their minds, independently to the matter though having regard to the opinion of the Enforcement officials as well. In the present case, it is an admitted position that the authority has had nothing new to bring to the table but has merely adopted the rate as put forth by the Enforcement Officers.

18. The confirmation of the order of learned Single Judge in the case of *State Bank of India Officer's Association (supra)* is more on the aspect of alternative remedy than on this position in law.

19. In light of the detailed discussion as above, the impugned orders are unsustainable and are quashed. These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.03.2023

Index:Yes

Neutral Citation:Yes



W.P.Nos.5158 to 5162 of 2020



W.P.Nos.5158 to 5162 of 2020

To

WEB COPY

The State Tax Officer,
Amaindakarai Assessment Circle
O/o. The Assistant Commissioner (ST)
Amaindakarai Assessment Circle,
No.F-50, 2nd Floor, First Avenue
Anna Nagar East,
Chennai – 600 102.



WEB COPY



W.P.Nos.5158 to 5162 of 2020

DR. ANITA SUMANTH,J.

ssm

W.P.Nos.5158 to 5162 of 2020

07.03.2023