IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.10294, 10337 and 10350 of 2020
and
W.M.P. Nos.12512, 12562 and 12602 of 2020

M/s.Eagle Earth Movers,
Represented by its Proprietor,
E.R. Subramaniam .. Petitioner in all W.P.s

vs

The State Tax Officer,
Tiruchengode Town Assessment Circle,
Tiruchengode. ... Respondent in
W.P. Nos.10294 of 2020
and
10350 of 2020

1. The Assistant Commissioner (ST) (FAC),
Tiruchengode Rural Assessment Circle,
Tiruchengode.

2. The Assistant Commissioner (ST),
Tiruchengode Rural Assessment Circle,
Tiruchengode .... Respondents
in W.P. No.10337 of 2020

Prayer in W.P. No.10294 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the respondent in TIN : 33063182289/2012-2013 and quash the impugned order dated 11.12.2019 as passed in violation of principles of natural justice and also contrary to the provisions of the TNVAT Act.

Prayer in W.P. No.10337 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the first respondent in TIN : 33773205421/2012-2013 and quash the impugned proceedings dated 09.12.2019 as passed in violation of principles of natural justice and also contrary to the provisions of the TNVAT Act.

Prayer in W.P. No.10350 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the respondent in TIN : 33063182289/2013-2014 and quash the impugned order dated 11.12.2019 as passed in violation of principles of natural justice and also contrary to the provisions of the TNVAT Act.

For Petitioner in all W.P.s : Mr.P.Rajkumar

For Respondent(s) in all W.P.s : Mr.V.Prasanth Kiran
Government Advocate

COMMON ORDER

Since the issue involved in all these writ petitions, is one and the same, these writ petitions are disposed of by this common order.

2. The Petitioner in these writ petitions have challenged the impugned Assessment Orders on the ground of violation of principles of natural justice.

3. The following grounds have been raised by the petitioner for challenging the impugned Assessment Orders.

a) the respondent(s) ought to have seen that when the petitioner has filed their objections, dated 12.12.2019 and the proof of acknowledgment extracted from the delivery book dated 13.12.2019, the same should have been considered while passing the impugned Assessment Orders. According to the petitioner, the impugned Assessment Orders were passed after receipt of the objections of the petitioner on 13.12.2019 but ante dated the same as if the Assessment Orders were passed on 11.12.2019, 09.12.2019 and 11.12.2019 in order to indirectly reject the detailed objections filed by the petitioner.

b) the respondent(s) was wrong in enhancing the taxable turnover of the petitioner without granting an opportunity of hearing to the petitioner. According to the petitioner in the notices dated 02.05.2017, 05.02.2019, 19.11.2019, 22.11.2019 and 04.02.2020, the respondent(s) has proposed to levy tax at the rate of 5% on the respective taxable turnover, but in the impugned Assessment Orders, dated 11.12.2019, the respondent(s) has levied the tax on the respective enhanced turnover without granting an opportunity of hearing to the petitioner. The table showing the details of respective Assessment year, Tax proposal notice amount, tax enhanced amount with rate, penalty proposal notice as well as enhanced penalty are show hereunder :

Sl. No.	***Asst. year***	***Tax proposal in the notices and Penalty Proposal in the notices dated 02.05.2017, 0502.2019 & 19.11.2019*** ***(in Rs.)***	***Tax enhanced in the impugned asst. order dated 11.12.2019*** ***(in Rs.)***	***Penalty enhanced in the impugned asst. order dated 11.12.2019*** ***(in Rs.)***
1.	2012-13	1,22,96,439 @ 5% + **9,22,0233**	1,31,69,479 (6,13,809 @ 5% + 1,25,55,670 @ 14.5%)	27,79,893
2.	2013-14	64,10,242 @ 5%	68,65,369 @ 14.5%	14,93,219

Sl. No.	***Asst. year***	***Tax proposal in the notices and Penalty Proposal in the notices dated 02.05.2017, 0502.2019 & 19.11.2019 (in Rs.)***	***Tax enhanced in the impugned asst. order dated 11.12.2019 (in Rs.)***	***Penalty enhanced in the impugned asst. order dated 11.12.2019 (in Rs.)***
		+ **4,80,768**		
3.	2014-15	28,68,943 @ 5% **2,00,170**	28,58,438/- @ 14.5%	6,21,711

c. The respondent(s) erred in levying higher tax rate of 14.5% on the respective turnover without granting an opportunity of hearing to the petitioner. According to the petitioner in the notices dated 05.02.2019, 19.11.2019, 22.11.2019 and 04.02.2020, the respondent(s) only proposed to levy tax at the rate of 5% on the respective turnover as indicated in the aforesaid table. But in the impugned Assessment Orders, dated 11.12.2019, 09.12.2019 and 11.12.2019, without granting an opportunity of hearing to the petitioner, the respondent has levied tax at the rate of 14.5%, which is contrary to the principles of natural justice.

4. The learned counsel for the petitioner in support of the petitioner's contention drew the attention of this Court to the following authorities.

a) Division Bench judgment of this Court in the case of ***Engine Valves Limited V. Union of India, reported in 1993 90 STC 84 (Mad)***.

Referring to the aforesaid decision, the learned counsel for the petitioner would submit that in an identical matter, where proposals contained in the pre-assessment notice was different from the Assessment Order, the Division Bench had quashed the Assessment Order and remanded the matter back to the respondent for fresh consideration.

b) A clarification Circular, dated 20.04.2001 issued by the Commissioner of Commercial Taxes and in particular, the learned counsel for the petitioner referred to Clause 13 in the said Circular wherein it has been stated that the order shall not be passed assessing a turnover different from the one proposed in the notice. According to the learned counsel for the petitioner, the respondent while passing the impugned Assessment Order has ignored the guidelines mentioned in the aforementioned Circular and has passed the Assessment Orders assessing the turnover of the petitioner different from the one proposed in the notices issued to the petitioner.

c) A decision of the Hon'ble Supreme Court in the case of ***M/s.SACI Allied Products Ltd., U.P., vs. Commissioner of Central excise, Meerut***, dated 26.04.2005 in appeal Civil No.5854 of 1999, which decision also makes it clear that if the Assessment Order goes beyond the show cause notice, the said Assessment Order is bad in law. The aforesaid principle was also laid down in the judgment of the Hon'ble ***Supreme Court in the case of the Commissioner of Customs, Mumbai vs. M/s.Toyo Engineering India Ltd.***, dated 31.08.2006. in Appeal Civil No.2532 of 2001. The said decision was also relied upon by the learned counsel for the petitioner.

d) A Division Bench Judgment of the Madras High Court in the case of ***CCL Products (India) Ltd. and another vs. Customs, Excise and Service Tax Appellate Tribunal and another, dated 07.11.2014 in C.M.A. No.2379 of 2006***, wherein also a similar view was taken.

5. Per contra, the learned Government Advocate appearing for the respondent(s) would refer to the final notice issued by the respondent(s)

on 22.11.2019 to the petitioner requesting the petitioner to give the particulars of the works contract performed by them. The respondent(s) have intimated the petitioner in the said communication that the tax payable by the petitioner in case, the purchases were made from a registered dealer is 5% and if it was made from an unregistered dealer, it was 14.5%. According to the learned Government Advocate, having been informed about the same, the petitioner is very well aware about the consequences for not furnishing the details of the purchases and therefore, the petitioner cannot now contend that the petitioner was not informed about the different tax rates in the proposals earlier sent to them by the respondent.

6. The learned Government Advocate appearing for the respondents would submit that he has received instructions that personal hearing was afforded to the petitioner in the impugned proceedings and therefore, there is no violation of principles of natural justice as contended by the petitioner. He would also submit that the judgments relied upon by the learned counsel for the petitioner would not apply to the facts and circumstances of the present case as sufficient opportunity

was granted to the petitioner with regard to the contentions raised by the petitioner in this writ petition and since the petitioner did not choose to furnish the details of the purchases, based on the best judgment assessment, the respondent had to pass the impugned Assessment Orders.

Discussion :-

7. Admittedly, the proposals sent by the respondents through their notices dated 02.05.2017, 05.02.2019 and 19.11.2019, 22.11.2019 and 04.02.2020, they have proposed to levy tax only at the rate of 5% on the respective taxable turnover of the petitioner. But as seen from the impugned Assessment Orders, dated 11.12.2019, 09.12.2019 and 11.12.2019, the respondent(s) has levied tax on the respective enhanced turnover, which is in excess of the respective taxable turnover mentioned in the proposals dated 02.05.2019, 05.02.2019 and 19.11.2019, 22.11.2019 and 04.02.2020.

8. As seen from the impugned Assessment Orders, a higher rate of tax at 14.5% on the respective turnover has been made without granting an opportunity of hearing to the petitioner. Excepting for the final notice

dated 22.11.2019 issued by the respondent(s) to the petitioner which discloses that the petitioner will have to furnish correct details of the purchases made by the petitioner and also discloses that in case, the purchases were made by the petitioner from a registered dealer, the levy of tax will be at the rate of 5% and in case the purchases were made from an unregistered dealer, the levy of tax will be at the rate of 14.5%, the actual figures based on the best judgment assessment of the respondent which is proposed to be made on the petitioner has not been disclosed. Only if such a disclosure was made in the notices, dated 02.05.2017, 05.02.2019, 19.11.2019, 22.11.2019 and 04.02.2020 issued by the respondent(s), the petitioner will be in a position to respond to the same and state his objections. Having not done so in the aforesaid notice, the respondent(s) cannot now contend that opportunity was granted to the petitioner to raise his objections with regard to the levy of tax at the rate of 5% and for other purchases at the rate of 14.5% respectively. According to the respondent(s) only based on best judgment assessment, they have imposed tax under the impugned Assessment Order but before coming to the conclusion with regard to the tax liability of the petitioner, the respondent(s) has not chosen to intimate the petitioner their proposal with regard to the levy of tax which culminated in the impugned Assessment Orders.

9. Further, as seen from the impugned Assessment orders, even though the learned Government Advocate appearing for the respondent(s) would submit that personal hearing was afforded to the petitioner, the same is not reflected in the impugned Assessment Orders.

10. The learned counsel for the petitioner would categorically contend that no personal hearing was afforded to the petitioner in the impugned Assessment Orders. Since in the impugned Assessment Orders, it is not seen as to whether personal hearing was afforded to the petitioner or not, the statement of the petitioner that no personal hearing was afforded to them in the impugned assessment proceedings has to be believed.

11. The Judgments relied upon by the learned counsel for the petitioner referred to supra also makes it clear that assessment made in the final order should not be in excess of the proposal made in the show cause notices. The Circular dated 20.04.2001 issued by the Commissioner of Commercial Taxes relied upon by the learned counsel for the petitioner also makes it clear that an order should not be passed

assessing the turnover different from the one proposed in the notice.

12. In the instant case, admittedly as seen from the impugned Assessment Orders, the proposal notices sent to the petitioner on different dates were for different amounts, but in the impugned Assessment Orders, the tax liability of the petitioner is much more than the figure mentioned in the proposals sent to the petitioner.

13. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated by the respondent(s) before passing of the impugned Assessment order and by non application of mind the impugned Assessment Orders have been passed, since the proposal notices sent by the respondent(s) discloses a different figure than which is determined in the impugned Assessment Orders and the figure determined in the impugned Assessment Orders are much higher than the figure disclosed in the proposal notices sent by the respondent(s).

14. For the foregoing reasons, the impugned Assessment Orders have to be quashed and the matter will have to be remanded back to the respondent(s) for fresh consideration on merits and in accordance with law.

15. In the result, impugned assessment orders dated 9.12.2019, 11.12.2019 are hereby quashed and these matters are remanded back to the respondents concerned viz., (sole respondent in W.P. Nos.10294 and 10350 of 2020 and to the first respondent in W.P. No.10337 of 2020) for fresh consideration on merits and in accordance with law. The respondents concerned, referred to supra are directed to pass final orders, after adhering to the principles of natural justice including granting the petitioner the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.

16. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index:Yes/No
Neutral Citation:Yes/No
vsi2

ABDUL QUDDHOSE, J.

vsi2

To
1. The Deputy State Tax Officer (Circle),
Harur Assessment Circle,
Harur.

2. The Assistant Commissioner (ST) (FAC),
Tiruchengode Rural Assessment Circle,
Tiruchengode.

3. The Assistant Commissioner (ST),
Tiruchengode Rural Assessment Circle,
Tiruchengode

W.P. Nos.10294, 10337
and 10350 of 2020

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