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W.P. Nos.15446, 15448 and 15449 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.15446, 15448 and 15499 of 2021

M/s Ess Emm Textiles,
represented by its Partner,
SF No.3/199 Udumalai Main Road,
Jallipatti, Sulur Taluk,
Tirupur District.

..Petitioner in all petitions

Vs.

The Assistant Commissioner (ST),
Palladam-I Assessment Circle,
Palladam, Tirupur.

..Respondent in all petitions

PRAYER in W.P.No.15446 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33646242999/2011-12, quash the intimation dated 30.04.2021 issued therein and further direct the respondent to consider the rectification application dated 19.04.2021 filed for the assessment year 2011-12 on merits following the directions of this Court in the order dated 20.06.2016 passed in W.P.Nos.26096 to 26098 of 2015.

PRAYER in W.P.No.15448 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33646242999/2012-13, quash the intimation dated 30.04.2021 issued therein and further direct the respondent to consider the rectification application dated 19.04.2021 filed for the assessment year 2012-13 on merits following the directions of this Court in the order dated 20.06.2016 passed in W.P.Nos.26096 to 26098 of 2015.



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PRAYER in W.P.No.15449 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33646242999/2013-14, quash the intimation dated 30.04.2021 issued therein and further direct the respondent to consider the rectification application dated 19.04.2021 filed for the assessment year 2013-14 on merits following the directions of this Court in the order dated 20.06.2016 passed in W.P.Nos.26096 to 26098 of 2015.

For Petitioner in all petitions : Mr.P.V.Sudakar

For Respondent in all petitions : Mr.Prashanth Kiran
Government Advocate

COMMON ORDER

The writ petitions are filed challenging the intimation dated 30.04.2021 issued for the assessment years 2011-12, 2012-13 and 2013-14 whereby the rejection of the petitioner's application under Section 84 of Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "TNVAT Act") primarily on the ground that it is not a speaking order. The rectification petition was filed on the premise that the orders of assessment suffers from the following errors apparent on the face of the record viz.,

a) That the impugned orders of assessment does not comply with the direction of this Court in W.P.Nos.26096 to 26098 of 2015, wherein according to the petitioner, it was held that there cannot be adhoc estimation of the sales of hank yarn. The relevant portion of the order in W.P.No.26096 of 2015 which was extracted in the rectification petition reads as under:



“6.

In fact, there cannot be any adhoc estimation of the sales effected by the petitioner as to whether the sales effected are hank yarn sales or otherwise and the Authority has to be specific as to why is rejected 50% of the turnover.

7. In the impugned orders of assessment, the respondent proceeded to confirm the proposals of the Enforcement Wing officials. The manner in which, the Assessing Officer proceeded to complete the assessment has been deprecated in several decisions pointing out that the Assessing Officer is an independent authority and uninfluenced by any report or proposal, the Assessing Authority has to finalize the assessments after considering the objections and documents. Therefore the respondent Authority could not have stated that the proposals arrived by the officials of the Enforcement Wing have been confirmed. Rather, he should have concluded as to why the restriction of exemption only to 50% is justifiable and this should have been done by proper reasons. Since this has not been done, the petitioner is entitled to succeed."

b) That the impugned orders of assessment insofar as it finds that documentary evidence is not furnished is contrary to the material on record, and the earlier orders of assessments, wherein it has been recorded that the entire books of accounts, LR receipts, sales and purchase details and all connected documents were filed by the petitioner and also inspected.

c) It was submitted that rejection of the petitioner's claim of goods being sent to M/s Neelakantiamman Spinners on the premise that documents were not furnished on a job work basis suffers from error apparent on the face of record inasmuch as the petitioner had furnished documents in the form of LR receipts, Form JJ delivery Challans apart from a TDS certificate etc. Further, the order of the Assessing Authority insisting the petitioner to produce the monthly returns



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of the job worker, viz., M/s Neelakantiamman Spinners, is not supported by any provision, the order thus suffers from the above errors apparent on the face of the record.

2. It is submitted by the learned counsel for the petitioner that the impugned order rejecting the petition under Section 84 of the TNVAT Act to rectify the errors apparent suffers from the vice of being a non-speaking order. It is further submitted that though the petitioner had explained in detail the errors that are apparent on the face of the assessment order which warranted exercise of powers under Section 84 of the TNVAT Act, none of the grounds / contentions has been dealt with by the respondent while rejecting the impugned order.

3. To the contrary, it was submitted by the learned counsel for the respondent that the Assessing Authority had not just called upon the petitioner to produce the monthly returns of M/s Neelakantiamman Spinners but a number of other documents which were not furnished and therefore, the assessment orders does not suffer from any error muchless an error apparent on the face of record.



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4. Heard both sides. Perused the materials on record.

5. To appreciate the above contentions viz., that the order rejecting the rectification petition being non-speaking, it may be relevant to refer to the impugned order rejecting the rectification petition under Section 84 of the Act.

"In this connection, it is informed that your request cannot be considered for the following reasons:

1) The objections filed in your representations had already been discussed in the assessment orders and the same was not accepted. The reasons for your objections are not acceptable were clearly mentioned in the orders passed.

2) You have not submitted any fresh grounds and valid supportive documents in connection with your representation for making rectification under section 84 of TNVAT Act, 2006. 3) The assessing officer could not pass rectification order u/s 84 of TNVAT Act, 2006 in this case, since there is no any error apparent on the face of the records available in this office for the year 2012-13 and hence earlier stands made in the assessment order are justified."

5.1. From a reading of the above extract and on considering the submissions made by both sides, I am of the view that the impugned order does suffer from the vice of being a non-speaking order inasmuch as it only contains the conclusion viz., that the request for rectification being rejected without assigning any reasons. When a request is made for rectification of an order, it is not for the authority concerned to refuse to exercise this power without giving any reason or without adverting to the representation made by the aggrieved



person. When the circumstances exist for the exercise of this power, it is mandatory to have recourse to it in public interest and to avoid injustice in taxation¹. When an earlier decision is plainly erroneous, it was held that there was a duty of the Court to say so and not perpetuate the mistake². Even if this power of the authorities is considered only as an enabling power, there is a duty to exercise it when the person entitled to it applies for it³.

6. Keeping in view, the nature of the power to rectify errors apparent on the face of the record, it appears to me that it is incumbent on the Assessing Authority while dealing with the rectification petition to pass order assigning reason, in other words, pass speaking order. It is now well recognised as one of the norms of natural justice that reasons be recorded and conveyed in an order quasi-judicial in nature. The need for it is well emphasised in a number of Supreme Court decisions⁴. The quasi-judicial authorities are enjoined with the duty and responsibility to see to it that in adjudicating upon proceedings which come before them they pass properly reasoned orders so that those who are

¹*N. Kuppanna Goundar vs. Appellate Assistant Commissioner (1973) 32 STC 522 Madras.*

²*Union of India vs. Raghubir Singh (1989) 74 STC 313 SC at p.327*

³*Hirday Narain vs. I.T.O. (1970) 78 ITR 26 SC*

⁴ *Harinagar Sugar Mills Ltd. V Shyam Sunder Jhunjunwala AIR 1961 SC 1669; (1962) 2 SCR 339; (1961) 31 Comp Cas 387; Bhagar Raja v Union of India AIR 1967 SC 1606; (1967) 3 SCR 302; Mahabir Prasad Santosh Kumar v State of U.P. AIR 1970 SC 1302; (1971) 1 SCR 201; (1970) 1 SCC 764.*



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affected by such orders are assured that their cases have received proper consideration at the hands of the said author and that such decisions have been reached according to law and have not been a result of caprice, whim or fancy or have been reached on ground of policy expediency. The rule requiring reasons to be given in support of an order must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law⁵. An order of quasi-judicial nature, without reasons, is a wholly defective order in the eye of law⁶. What the assessing authority is expected by the rules of fundamental fairplay is not a mere empty formality but what the assessing authority is duty bound to do is to give reasoned finding so that an aggrieved party may be able to canvass the correctness of the same. To appreciate the importance of reasons being assigned in support of orders having civil consequences, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Oryx Fisheries (P) Ltd. v. Union of India*, (2010) 13 SCC 427:

40. In Kranti Associates (2010) 9 SCC 496 this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below :

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

⁵ *The Seimens Engineering And Manufacturing Co. of India Ltd., v Union of India AIR 1976 SC 1785; (1976) 2 SCC 981*

⁶ *Government of India v Maxim A.Lobo (1991) 190 ITR 101*



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(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor(1987) 100 Harv. L. Rev. 731-37.)



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(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

7. In the light of the above discussion, I am of the considered view that the impugned orders are non-speaking and thus liable to be set-aside. The respondent is directed to pass a speaking order within a period of 8 weeks from the date of receipt of a copy of this order after providing the petitioner a reasonable opportunity of hearing. The writ petitions are disposed of accordingly. No costs.

01.12.2023

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.
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To:
The Assistant Commissioner (ST),
Palladam-I Assessment Circle,
Palladam, Tirupur.

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