IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.18707 of 2020
and
W.M.P. Nos.23226 and 23228 of 2020

M/s. Murugan & Co.
Rep.by its partnership
P.A.Sankar
S/o. Late.P.Ananthabaskaran
No.74, Odiampet Road,
Kanuvapet,
Villianur, Puducherry 605 110. ... Petitioner

v.

1.The Union of India,
Rep. By its Commercial Tax Department,
Government of Puducherry.

2.The Assistant Commissioner (Appeal),
Commercial Tax Department,
Government of Puducherry.

3.The Commercial Tax Officer-I,
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Pondicherry 605 005. ...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the common order dated 12.10.2020 passed by the second respondent in Appeal Nos.11,12,13 & 14/PVAT/2014-15/AAC and quash the same as illegal, null and void.

For Petitioner : M/s Iswarya Priya K.S. For Mr.P.Malaravan

For Respondents : Mr.B.Ramaswamy, Additional Government Pleader (Pondicherry)

ORDER

The short question that arises for consideration is whether the impugned order passed by the Appellate Authority suffers from violation of principles of natural justice inasmuch as after fixing the date of hearing on 12.10.2020, the order came to be passed on the very same day and thus unsustainable.

2. Brief Facts:

The petitioner is a partnership concern engaged in the sale of LPG cylinders for both commercial and domestic use. Originally, LPG was taxable at 4% under Entry 45 of Part A of the III Schedule to the Puducherry VAT Act. The rate of tax was reduced to 1% by the Government of Puducherry vide notification in G.O.No.27/F2/2007 dated 01.07.2007. A notice came to be issued on the premise that the petitioner had after collecting 12.5% taxes from its customers on the sale of LPG had remitted 1% to the Government and retained the remaining 11.5%. A writ petition in W.P.No.21718 of 2012 challenging the demand, was filed which was disposed of with the following directions on 14.02.2014. The relevant portions reads as under.

> "10.In such a view of the m*atter, this writ petition is disposed of with a direction to the respondents to issue a show cause notice to the petitioner Company within a period of two weeks from the date of receipt of copy of this order stating, as to how the second respondent is justified in demanding 12.50% VAT from the petitioner for the above said period, and if any such notice is given, the petitioner is directed to give its reply within two weeks from the date of receipt of show cause notice to be issued. Based on the reply of the petitioner to be given and after conducting adjudication proceedings, the second respondent is directed to pass fresh orders within eight weeks therefrom. It is made clear that if there is no proof regarding collection of more than 1% VAT by the petitioner, the respondents are not justified in making demand at the rate of 12.50% towards VAT. petition is closed."*

2.1.Pursuant thereto, a notice dated 11.03.2014 was issued calling for purchase and sales details for the period 01.07.2007 to 31.03.2011. It is stated that the petitioner submitted the purchase details, sales register, supplier payment details and bank statement for the said period. However, the 3rd respondent passed an order stating that the petitioner had after collecting VAT at 12.5% against the sales of LPG cylinders for commercial use from its customers remitted only 1% to the Government, thus the petitioner was liable to pay the differential tax of 11.5%, while also levying penal interest.

2.2. Aggrieved, the petitioner preferred an appeal against the order dated 01.09.2014 in Appeal Nos.11,12,13 & 14/PVAT/2014-15/AAC. The 3rd respondent submitted its response to the appeal filed by the petitioner. The Appellate Authority issued a hearing notice on 25.09.2020 fixing the final hearing on 12.10.2020. The petitioner was prepared with his arguments and intended to file a summarized grounds of appeal / written notes on 12.10.2020. It is stated that the 2nd respondent refused to receive the same while informing the petitioner that orders have been passed and insisted the petitioner to receive appeal the copy of the order passed in appeal. It is this order of the Appellate Authority which is under challenge in the present writ petition.

3. It is the submission of the learned counsel for the petitioner that the impugned order is made on the same day on which the hearing was fixed which clearly reveals predetermination and the opportunity of hearing was not real but an empty formality, the orders thus suffers from violation of principles of natural justice.

4. To the contrary, it was submitted by the learned counsel for the respondents that what is covered by the notification dated 01.07.2007 was only LPG for domestic use and the rate of tax in respect of sales of LPG cylinder for commercial use was 12.5% vide Entry I of Part A of the IV Schedule of the PVAT Act. That the petitioner had remitted only 1% even in respect of LPG cylinders for commercial use, contrary to the Act, more so, after having collected taxes at 12.5% from its customer, the retention of the remaining 11.5% is illegal. After filing its appeal before the 2nd respondent, the petitioner had been repeatedly taking adjournments only to protract. That it was only upon adjourning the matter on several occasions and after the petitioner had submitted his written arguments, the 2nd respondent posted the matter for final hearing on 12.10.2020 and passed the orders on

the said date. The pronouncement of the common order on 12.10.2020 was intimated to the petitioner and as the order was already made ready, the same was tendered to the petitioner on 12.10.2020. It was thus submitted that the impugned order is made in compliance with principles of natural justice and thus the writ petition ought to be rejected.

5. Heard both sides. Perused the material on record.

6. This Court finds that the impugned order stands vitiated for two reasons:

a) <u>Order passed on the same date fixed for hearing vitiates the proceeding:</u>

The impugned order has been passed on 12.10.2020 after issuing a hearing notice on 25.09.2020, wherein it was stated that the case was being posted for final hearing on 12.10.2020. That being the case, the order of the Appellate Authority and the explanation in the counter that the Appellate Authority only intended to pronounce the order on 12.10.2020 is contrary to material on record and thus ought to be rejected. The Appellate Authority has vide its communication dated 13.10.2020 stated that the order was ready for issuance on the said date i.e., 12.10.2020, though in the hearing notice dated 25.09.2020 it was stated that the date for hearing was fixed on 12.10.2020. It is well settled that once a date is fixed for hearing and if orders are passed on the same date that by itself would vitiate the proceedings. In this regard, it may be relevant to refer to the decision of this Court in the case of *S.Velu Palandar v. Deputy Commercial Tax Officer, Thanjavur II,* reported in *(1972) 29 STC 151.* This Court while dealing with the case of the revenue that the petitioner having been informed that they may file its objection within a particular hour of a day, any submission of objections beyond the time fixed on the said date need not be considered was rejected by this Court. The relevant portion of the order is extracted hereunder:

> **"5.** *I am not inclined to go into the merits, as I am fairly satisfied that the petitioner did not have an effective opportunity to state his objections and sustain his case that the goods in question cannot once over be subjected to tax, as, in law, they are liable to sales tax at one single point. The main contention of the learned counsel for the petitioner is that the fixation of time-limit during the working hours of a notified date is by itself a method which militates against the principles of natural justice and fair hearing. <u>If any quasi-judicial Tribunal gives a party before it an opportunity to explain himself or herself to a particular action proposed by the said authority, then, it would be futile to fix a particular hour of a day as the outer limit for making such submissions.</u>*

It would be normally difficult even for such an authority who fixes such an outer limit, to obey it itself for all purposes. There may be instances where the authority may not be in a position to take up the case on that date due to official pressure or otherwise. If an opportunity is given to a party to explain itself or submit its objections, such an opportunity must be realistic and not notional. If any time, such as the one given in this case, is given, the normal presumption is that the person who is to state his objections can file the same before the expiry of the working hours of that date. Such outer limit may be fixed for administrative convenience; but, if it comes to the question of appreciation of rights and obligations of parties, equity and justice interfere and compel courts to afford a reasonable and effective opportunity to persons aggrieved and affected to state their objections by the end of the working day in question notwithstanding the fact that an hour, a minute or a second of the day is noted in that order.

***6.** In the instant case, therefore, the normal presumption is that the petitioner would be entitled to file his objections on or before 25th March, 1967, itself and therefore there is a violation of the principles of natural justice, in that the petitioner did not have a real opportunity to state his the assessment order was made on that day itself. On this only ground, the rule nisi is made absolute and the writ petition is allowed."*

(emphasis supplied)

b) Impugned order suffers from the vice of pre-determination:

The above sequence of events is also indicative of the fact that the Appellate Authority had predetermined / prejudged the issue inasmuch as after fixing the date of hearing on 12.10.2020, to state that the orders were ready on the same day i.e., 12.10.2020 clearly reveals that the hearing was an empty formality, illusory and not real. An order which suffers from the vice of predetermination cannot be sustained. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in *Siemens Ltd. v. State of Maharashtra, (2006) 12 SCC 33* which reads as under:

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> ***"9.*** *Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.*
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> ***10.*** *The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant [(2006) 11 SCC 42 : (2006) 6 Scale 66] , stating: (SCC p. 60, paras 48-49)*
> *"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.*
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> *49. In K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] this Court held: (SCC p. 449, para 16)*
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> *'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.'"*
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> *(emphasis supplied)*

7. For the above reasons, the impugned order is set aside with a direction to the 2nd respondent to hear the appeal and pass orders within a period of 4 months from the date of receipt of a copy of this order after granting the petitioner an opportunity of hearing which is real and not illusory or an empty formality and in accordance with law. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous are closed.

29.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
shk

To:

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Government of Puducherry.

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MOHAMMED SHAFFIQ, J.

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