IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.19799, 13023 and 13025 of 2020
and
W.M.P. Nos.16134, 16139 and 24482 of 2020

M/s.Bhansali Chemicals (Madras) Limited.,
Rep. By its Director Mr.K.Ashok Mehta,
Now at : No.2305, Dhada Arcade III floor,
108, Nainiyappa Naicken Street,
Chennai 3. ... Petitioner in all petitions

v.

The State Tax Officer,
Arumbakkam Assessment Circle,
No.50, 1st Avenue, Anna Nagar [East]
Chennai 102. ... Respondent in all petitions

Prayer in W.P.No.19799 of 2020: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 1st respondent proceedings in TIN/33261463630/2013-14 dated 05.11.2020 and quash the same being violated the principles of natural justice, illegal, invalid and against the law and also law laid down by this Court.

Prayer in W.P.No.13023 of 2020: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 1st respondent proceedings in TIN/33261463630/2014-15 dated 31.12.2019 and quash the same being violated the principles of natural justice, illegal, invalid and against the law and also law laid down by this Court.

Prayer in W.P.No.13025 of 2020: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 1st respondent proceedings in TIN/33261463630/2015-16 dated 31.12.2019 and quash the same being violated the principles of natural justice, illegal, invalid and against the law and also law laid down by this Court.

For Petitioner in all petitions: Mr.D.Vijayakumar

For Respondent in all petitions: Mr.C.Harsha Raj
Additional Govt. Pleader

ORDER

The writ petitions are filed challenging the impugned orders of assessment under TNVAT Act for the assessment years 2013-2014, 2014-15, 2015-16 dated 05.11.2020 and 31.12.2019 respectively on the premise that the same is made on the basis of the report of the enforcement wing officers. Importantly, the impugned order is made 10 months after the last notice was issued calling upon the petitioner for personal hearing which by itself is indicative of not granting adequate opportunity. The challenge is thus made to the impugned assessment orders as having been made in violation of principles of natural justice.

2. Facts in W.P.No.19799 of 2020:

i) The petitioner is a dealer in micro nutrients and other chemicals. For the assessment year 2013 – 2014 the petitioner filed its returns and thereafter an inspection was carried out by the enforcement wing officers on 03.10.2016. Verification of the monthly returns filed by the dealer on the Commercial Tax Department website for the assessment year 2013-2014 revealed *inter-alia* the following discrepancies:

a) Exemption claimed by the dealers without furnishing relevant documentary evidence in support thereof.

b) Claim of exemption on zero rate sale was made without producing documentary evidence to show that sales were made to units located inside Special Economic Zone (SEZ) in Tamil Nadu in terms of Section 18(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the

"TNVAT Act").

c) Verification of balance sheet and the purchase turnover reported in the monthly returns revealed difference in turnover, which was proposed to be treated as deemed sale value on which tax was proposed to be levied.

d) Scrutiny of annual audit report revealed that the petitioner had claimed and received certain income without furnishing corresponding details / documents to show that the said sums / income did not represent sales turnover.

ii) The petitioner submitted their objection to the notice dated 03.04.2017 vide letter dated 20.11.2017 requesting the respondents to furnish dealer wise web details, which was responded to by the Revenue vide notice dated 29-11-2017.

iii) The petitioner had filed further objection vide letter dated 12.12.2017 *inter-alia* submitting the following :

a) That the claim of exemption represents sale of insecticides and pesticides exempted vide G.O.Ms.No.16 dated 04.01.2007.

b) In respect of the proposal to disallow the claim of zero rate sales to SEZ it was stated that above claim was not made on the basis that the sales were made to SEZ but on the premise that the above turnover represented sale of exempted goods.

iv) Another notice was issued on 22.01.2018 calling upon the petitioner to produce the documents in support of their objection dated 14.12.2017 and 08.01.2018. A personal hearing was also granted on 30/09/2019.

v) The objections filed by the petitioner was rejected upon finding that the sale bill does not reveal that the goods were sold as fertilizers and for agricultural produce to claim the benefit of exemption. Similarly, in regard to the claim of exemption for zero rate, it was found that relevant documentary evidence was not furnished. In respect of the difference between the balance sheet and the returns, the objections were rejected on the ground that reconciliation details have not been filed / submitted by the petitioner. Similarly, in respect of miscellaneous income, it is found that the petitioner had not filed any proof to show conclusively that the receipts did not represent consideration for sale of goods. The impugned order was passed confirming the proposal.

vi) The petitioner challenged the impugned order on the ground that the Respondent /assessing officer has completed the assessment solely on the basis of the report of the enforcement wing officers and the impugned order of assessment dated 05.11.2020 has been passed after almost 10 months since the date of personal hearing on 30.12.2019, indicative of not granting adequate opportunity.

2.1. Facts in W.P.No.13023 of 2020:

Pursuant to the inspection carried out by the enforcement wing officers on 03.10.2016 and verification of the monthly returns filed by the dealer on the Commercial Tax Department website for the assessment year 2014-15 revealed *inter-alia* the following discrepancies :

a) During the course of inspection, it was found pursuant to cross-verification of Annexure-II filed by the other end dealers with the Annexure-I filed by the petitioner along with the monthly returns revealed certain discrepancies.

b) Similarly, cross-verification of the MIS report of the purchasing dealers revealed discrepancies between Annexure 1 of the purchasing dealers and Annexure 2 of the petitioner.

c) It was also found that certain turnover was not disclosed on the basis of intranet MIS web report in the monthly returns of the petitioner.

d) The petitioner had claimed exemption without any evidence in support thereof.

e) The petitioner's claim of zero rate sale is made without filing any proof in support of such claim in terms of Sections 18 of the TNVAT Act.

f) That the petitioner had effected stock transfer after availing input tax credit and thus liable to reverse the input tax credit in terms of Section 19(5) of the TNVAT Act.

g) Verification of the Balance Sheet with the returns filed revealed that there was difference between the turnover reported in the Balance Sheet and the returns filed, which was sought to be treated as sales suppression by adding gross profit of 10%.

h) Scrutiny of annual audit report revealed that certain miscellaneous income / receipts during the assessment year, the same was not reported. However, there is no evidence let in to show that the same did not represent consideration for sale of goods.

3. The petitioner submitted a letter on 13.11.2019 claiming that mis-match data has not been served on them. The same was furnished to them vide e-mail dated 18.11.2019 and notice was issued on 19.11.2019 calling upon the petitioner to submits its objections to be filed within 10 days. The petitioner filed its objection inter-alia submiting the following amongst others:

i) Tax cannot be levied both on mismatch of purchase and sales which is amounted to double taxation.

ii)The input tax is claimed on proper purchases and copies of purchase invoices are enclosed.

iii)The Assessing Authority should verify the correctness of the claim of input tax by verifying the purchase documents and if there is any sale tax not paid by the seller, the seller has to be proceeded against.

iv)The proposal of reversal of input tax on the basis of annual cross verification of purchase and sales is wrong since the claim of input tax is made on the basis of Tax Invoices.

v) The conclusion of omission of purchase and sales on the basis of check post data is not conclusive, that they have filed C forms for all interstate sales and that proposal to levy tax without giving effective opportunity is not proper.

vi)The claim of exemption on sales of fertilizer and insecticides and pesticides is correct.

vii) Sales to SEZ and 100% EOU is fully exempt vide Circular No.1082 dated 22.08.2007 and as held in the case of Emerald Stones Export in WP.(MD)No.5358 of 2011.

viii)There is no difference in purchase turnover and the figures as per Balance Sheet is correct.

ix) The miscellaneous income and commission received are only Bank interest and commission received and that there is no sale of goods.

x)That the rebate and discount on purchase did not disturb the tax component and that therefore may be dropped.

xi) An opportunity may be granted before passing orders of revision.

4. The assessing authority on receipt of the above objections confirmed the proposal *interalia* on the basis of the following finding:

a) The petitioner had not filed transaction wise co-relation with reference to Annexure 1 and 1A. The claim of exemption was allowed in respect of Insecticides and Pesticides, however it was found that the raw materials used in the manufacture of exempted goods was liable to be reversed in terms of Section 19 of TNVAT Act and it was thus reversed.

b) With regard to the claim of zero rate sales, it was found that the petitioner had not filed proof in support thereof.

c) In respect of the difference in purchase turnover as per the balance sheet and returns the objections were rejected as the petitioner had not filed reconciliation statement with regard to the said difference.

d) With regard to the miscellaneous income, the petitioner's claim that the same represented receipt of discount on purchases was not supported by documentary evidence.

4.1. The petitioner was granted personal hearing on 30.12.2019 and the proposal were confirmed vide the impugned order of assessment.

5. Facts in W.P.No.13025 of 2020:

Pursuant to the inspection carried out by the enforcement wing officers on 03.10.2016 and verification of the monthly returns filed by the dealer on the Commercial Tax Department website for the assessment year 2015-2016 revealed *inter-alia* the following discrepancies :

a) During the course of inspection, it was found pursuant to cross-verification of Annexure-II filed by the other end dealers with the Annexure-I filed by the petitioner along with the monthly return revealed certain discrepancies.

b) Similarly, cross-verification of the MIS report of the purchasing dealers revealed discrepancies between Annexure 1 of the purchasing dealers and Annexure 2 of the petitioner.

c) It was also found that certain turnover was not disclosed on the basis of intranet MIS web report in the monthly returns of the petitioner.

d) The petitioner had claimed exemption without any evidence in support thereof.

e) The petitioner's claim of zero rate sale is made without filing any proof in support of such claim in terms of Sections 18 of the TNVAT Act.

f) That the petitioner had effected stock transfer after availing input tax credit and thus liable to reverse the input tax credit in terms of Section 19(4) of the TNVAT Act.

g) Verification of the Balance Sheet with the returns filed revealed that there was difference between the turnover reported in the Balance Sheet and the returns filed which was sought to be treated as sales suppression by adding gross profit of 10%.

h) Scrutiny of annual audit report revealed that certain miscellaneous income / receipts during the assessment year, the same was not reported. However, there is no evidence let in to show that the same did not represent consideration for sale of goods.

6. The petitioner submitted a letter on 30.11.2019 claiming that mis-match data has not been served on them. The same was furnished to them vide e-mail dated 18.11.2019 and notice was issued on 19.11.2019 calling upon the petitioner to submits its objections to be filed within 10 days. The petitioner filed its objection inter-alia submitting the following amongst others:

i) Tax cannot be levied both on mismatch of purchase and sales which is amounted to double taxation.

ii) The input tax is claimed on proper purchases and copies of purchase invoices are enclosed.

iii) The Assessing Authority should verify the correctness of the claim of input tax by verifying the purchase documents and if there is any sale tax not paid by the seller, the seller has to be proceeded against.

iv) The proposal of reversal of input tax on the basis of annual cross verification of purchase and sales is wrong since the claim of input tax is made on the basis of Tax Invoices.

v) The conclusion of omission of purchase and sales on the basis of check post data is not conclusive, that they have filed C forms for all interstate sales and that proposal to levy tax without giving effective opportunity is not proper.

vi) The claim of exemption on sales of fertilizer and insecticides and pesticides is correct.

vii) Sales to SEZ and 100% EOU is fully exempt vide Circular No.1082 dated 22.08.2007 and as held in the case of Emerald Stones Export in WP.(MD)No.5358 of 2011.

viii) The stock transfer to other State is made out of stock from interstate purchase and import purchase and hence there is no due for reversal of input tax.

ix) There is no difference in purchase turnover and the figures as per Balance Sheet is correct.

x) The miscellaneous income and commission received are only Bank interest and commission received and that there is no sale of goods.

xi) That the rebate and discount on purchase did not disturb the tax component and that therefore may be dropped.

7. The assessing authority on receipt of the above objections confirmed the proposal *interalia* on the basis of the following finding:

a) The petitioner had not filed transaction wise co-relation with reference to Annexure 1 and 1A. The claim of exemption was allowed in respect of Insecticides and Pesticides, however it was found that the raw materials used in the manufacture of exempted goods was liable to be reversed in terms of Section 19 of TNVAT Act and it was thus reversed.

b) With regard to the claim of zero rate sales, it was found that the petitioner had not filed proof in support thereof.

c) In respect of the difference in purchase turnover as per the balance sheet and returns the objections were rejected as the petitioner had not filed reconciliation statement with regard to the said difference.

d) With regard to the miscellaneous income, the petitioner's claim that the same represented receipt of discount on purchases was not supported by documentary evidence.

7.1. The petitioner was granted personal hearing on 30.12.2019 and the proposal were confirmed vide the impugned order of assessment.

8. The petitioner's challenge is on the premise that the impugned orders are non-speaking and that the impugned orders of assessment is made solely on the basis of the enforcement wing proposal.

9. To the contrary it is submitted by the learned counsel for the Respondent that the impugned orders of assessment have been passed after granting adequate opportunity to the petitioners and on finding that the objections to the proposal was not supported by documentary evidence. It was thus submitted that the issue involve disputed questions of fact and thus the present writ petitions ought not to be entertained inasmuch as the effective alternate remedy by way of an statutory appeal is available to the

petitioner.

10. Heard both sides. Perused the material on records.

11. This Court finds merit in the submission of the learned counsel for the Respondent that the impugned order of assessment is made primarily on the ground that the petitioner's claim / submissions in its objection was not supported by documentary evidence. The issues involved requires closer scrutiny / examination of facts along with documentary evidence, an exercise which is beyond the realm of Article 226 of the Constitution of India more so when there is an effective alternate remedy available to the petitioners. It is trite law that this Court would be loathe in interfering with orders of assessment involving disputed questions of fact. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of *Thansingh Nathmal v. Supdt. of Taxes, (1964) 6 SCR 654 : AIR 1964 SC 1419 : (1964) 15 STC 468,* wherein it was held as under*:*

> "**7.** *Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved*

> *the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

12. In view of the same the writ petitions stand dismissed. However, the petitioners are at liberty to challenge the impugned orders by way of an appeal(s) if they are so advised within a period of 4 weeks from the date of receipt of a copy of this order. If such appeal(s) is filed, the Appellate

Authority shall subject to the petitioner complying with the statutory conditions relating to appeal including pre-deposit shall entertain the same without reference to limitation. No costs. Consequently, connected miscellaneous petitions are closed.

29.09.2023

Index: Yes/No
Speaking order/ Non speaking order
Neutral Citation :Yes/No
shk /spp

To:
The State Tax Officer,
Arumbakkam Assessment Circle,
No.50, 1st Avenue, Anna Nagar [East]
Chennai 102.

MOHAMMED SHAFFIQ,J.

Shk/spp

W.P. Nos.19799, 13023 and 13025 of 2020
and
W.M.P. Nos.16134, 16139 and 24482 of 2020

29.09.2023