BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.12644 to 12646 of 2022
and
W.M.P.(MD)Nos.8959, 8960 and 8962 of 2022

M/s.Agathyaz Traders,
represented by its Proprietrix G.Geetha,
No.75, Trichy Main Road,
Thirumanilaiyur, Karur-639 002. ... Petitioner in all cases

Vs.

The State Tax Officer,
Survey Unit-1,
Office of the Assistant Commissioner (ST)
(Investigation) Intelligence Wing,
Erode Division, Erode. ... Respondent in all cases

PRAYER in W.P.(MD)No.12644 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AJEPG0595M1Z4/2017-18, dated 30.09.2020 and to quash the same.

PRAYER in W.P.(MD)No.12645 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AJEPG0595M1Z4/2018-19, dated 30.09.2020 and to quash the same.

PRAYER in W.P.(MD)No.12646 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** to call for the records pertaining to the impugned order passed by the respondent in GSTIN:33AJEPG0595M1Z4/2019-20, dated 30.09.2020 and to quash the same.

In all cases:

For Petitioner	:	Mr.T.Bashyam
For Respondents	:	Mr.M.Ramesh Government Advocate

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COMMON ORDER

These writ petitions are filed by M/s.Agathyaz Traders challenging the impugned assessment orders dated 30.09.2020 for the Assessment years 2017-2018, 2018-2019 and 2019-2020.

2.The petitioner was a trader engaged in trading of timber logs and wooden saws as well as engaged in manufacturing of door and window frames and was an assessee under GST, but closed the business in the year 2021. The petitioner has filed the return for the assessment year 2017-2018, 2018-2019 and 2019-2020. The contention of the petitioner is that the respondent has conducted inspection of the petitioner's premises and has taken away all the documents. Based on the inspection, a report was submitted by the Intelligence Wing to the Assessing Officer. The Assessing Officer in turn had issued a show cause notice, dated 02.07.2020 for which the petitioner submitted reply dated 22.09.2020, wherein the petitioner has narrated the defects in the show cause notice as well as the proposed assessment. And the summarization of the entire objection is that:

> *"(1) The petitioner was illegally forced to submit reply in 3 Days not obeying the GST council relaxation.*
>
> *(2) Still date / permission for seeing or copying Relied upon documents not given, you cannot pass orders based on evidence in your possession without disclosing and giving an opportunity to contest the evidence.*

> *(3) You have decided incorrectly that there is no vehicle when the Vahan App is showing the vehicle*
>
> *Hence, we request you to give us a proper and full opportunity to explain the other mistakes in the Show cause Notice."*

The petitioner has specifically stated that the entire documents are with the Vigilance Department and hence, the petitioner is not in a position to submit his explanation without any documents. Moreover, the petitioner had sought opportunity to peruse the documents and submit their objections, but the respondents have not granted adequate opportunity to the petitioner. The petitioner vehemently objected to the assessment proceedings since the assessment is passed based on the inspection report and there is no independent application of mind.

3.The learned Counsel appearing for the petitioner relied on the order passed in the case of ***Madras Granites (P) Ltd. vs Commercial Tax***

Officer, dated 30.10.2002 reported in (2006) 146 STC 642 (Mad) wherein it is held that the Assessing Officer cannot rely on the report without independently analyzing the issue and cannot pass an order. The relevant portion of the order is extracted hereunder:

> *"4. No doubt, the assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT), Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal.* ***It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law.*** *Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first*

respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected W.P.M.Ps. are closed."

4. The Learned Counsel appearing for the petitioner further submitted that the authorities had taken away the documents during inspection and without the returning the documents and without serving the copies of the documents, the respondents had directed the petitioner to submit objections to the show cause notice, thereby the respondents have directed to do the impossible and relied on the order passed in the case of ***G.Thangavel Nadar Vs. The Deputy Commercial Tax Officer,*** dated 06.12.1962 reported in ***[1963] 14 STC 420 (Mad)*** wherein it is held as under:

"4. ***It is clear that to ask an assessee to submit a return and at the same time taking away his books of account is to demand the impossible.*** *It is unthinkable that the Deputy Commercial Tax Officer could proceed to penalize a person for not doing something, the doing of it being prevented by the officer's own action. In this view of the matter there is no doubt whatsoever that there has been a gross violation of the principles of natural justice. That the assessee failed to submit return for earlier years or failed to register himself cannot give jurisdiction to the assessing authority to impose a penalty for the assessment year in question."*

5. The learned Government Advocate appearing for the respondent relied on the common counter affidavit and submitted that the petitioner has not responded to any notice properly. The petitioner was granted opportunity on 03.09.2020, 07.09.2020, 16.09.2020 and 22.09.2020. Since the petitioner has not responded to any of the notice, the respondents were left with no option than to pass order for the assessment years 2017-18, 2018-19 and 2019-20 and the same was completed on 30.09.2020. The respondent has taken all the relevant provisions as well as notices and circulars into consideration and finally has passed the impugned orders. Therefore, the petitioner cannot find fault with it. Moreover, the petitioner has statutory remedy of filing an appeal. Without filing an appeal, the petitioner has come forward to file these writ petitions. Hence, the respondent prayed to dismiss the writ petitions.

6. After hearing the rival submissions of both sides, this Court is of the considered opinion that after inspection, the respondent has taken away the documents. When the respondent is in possession of the documents, then

respondent cannot expect the petitioner to make a submission without referring to the documents. In fact, the petitioner has specifically sought to refer the documents. The respondents have not supplied the copy of the documents, in fact the respondents have not even allowed the petitioner to see the documents.

7. Therefore, this Court is of the considered opinion that the respondents have not circulated the documents, thereby the respondents have not granted effective opportunity to the petitioner and violated the principles of natural justice. The opportunity includes supply of documents as well. When that was not done, the petitioner is entitled to relief. As rightly pointed out by the learned Counsel appearing for the petitioner, the judgment referred supra had held that the respondent is demanding the assessee to do the impossible. Therefore, the impugned assessment orders are liable to be quashed and accordingly quashed.

8. The respondent is directed to supply all the relevant documents

which the respondent is relying as well as the respondent is directed to produce all the documents which the petitioner inclines to rely and thereafter, pass orders.

9. Since the revenue cannot be at loss, therefore the petitioner is directed to pay Rs.2 Lakhs/- for each assessment order. The above said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. With the above said observation, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Tmg

To

The State Tax Officer,
Survey Unit-1,
Office of the Assistant Commissioner (ST)
(Investigation) Intelligence Wing,
Erode Division, Erode.

S.SRIMATHY, J.

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W.P.(MD).Nos.12644 to 12646 of 2022

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