IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.777 to 780 of 2023
and
C.M.P. Nos.7560, 7565, 7566 and 7569 of 2023

The Deputy State Tax Officer,
Tirukoilur Assessment Circle,
Tirukoilur 605 757. ...Appellant in all appeals

v.

Tvl Arul Medicals,
Rep. By its Proprietor,
Thiru K Arul,
89, Main Road,
Ulundurpet 606 107,
Kallakurichi District. ...Respondent in all appeals

Prayer in W.A.No.777 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.9334 of 2021 dated 20.03.2023.

Prayer in W.A.No.778 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.9332 of 2021 dated 20.03.2023.

Prayer in W.A.No.779 of 2023: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.9330 of 2021 dated 20.03.2023.

Prayer in W.A.No.780 of 2023: Writ Appeal is filed under Clause 15 of the Letter

Patent, praying to set aside the order passed by the learned Judge in W.P.No.9411 of 2021 dated 20.03.2023.

For Appellant in all cases	: Mr.Haja Nizarudeen, Additional Advocate General Assisted by Mr. M.Venkateswaran, Special Government Pleader.
For Respondent in all cases	: Mr.D.Vijayakumar

COMMON JUDGMENT

The present writ appeals are filed by the department challenging the common order of the learned Judge dated 20.03.2023, whereby the Commercial Taxes Department was directed to remit costs of Rs.20,000/- to the Cancer Institute, Adyar, Chennai, for the failure on the part of the Deputy State Tax Officer, Thirukoilur to pass orders of assessment in compliance with the directions issued by the learned Judge *vide* order dated 16.04.2021.

2.At the outset, it must be stated that though the appellant had raised grounds challenging the order of the learned Judge revoking the liberty granted to re-do the assessments, however, during the course of hearing, the learned Additional Advocate General appearing on behalf of the appellant submitted that they would confine themselves to the challenge only in respect of imposition of costs on the Commercial Taxes Department.

3.The respondent was engaged in the business of buying and selling of drugs and medicines. For the assessment years 2010-11, 2012-13, 2013-14 and 2014-15, the orders of assessment dated 03.03.2021 and 04.03.2021 were made reversing the credit claimed by the respondent on the premise that there is a mismatch between the details furnished in the returns filed by the respondent vis-a-vis third party dealers. The said orders on being challenged by way of writ petitions, the learned Judge was pleased to remand the matter back to the Assessing Authority on finding that this Court in the case of *J.K.M. Solutions Private Limited v. CTO, Vepery Assessment Circle, Chennai* reported in *(2017) 99 VST 343 (Mad)* had while considering the difficulties faced in making assessments relating to mismatch issues, suggested that a mechanism must be put in place by the Commercial Taxes Department. Pursuant to the said directions of this court, a mechanism / procedure to be followed in cases relating to mismatch, was framed *vide* Circular No.5 of 2021 dated 24.02.2021. Vide order dated 16.04.2021, the learned Judge was pleased to set aside the orders of assessment and directed the Deputy State Tax Officer to pass fresh orders in accordance with Circular No.5 of 2021 dated 24.02.2021. The matters were directed to be listed for compliance on 15.06.2021.

4.The matters were listed on 02.07.2021 and the respondent sought for extension of time to comply with the directions issued by the learned Judge *vide* order dated 16.04.2021, while submitting that they were unable to comply with the directions due to Covid 19 pandemic. Considering the same, the learned Judge extended the time to comply with the directions until 03.08.2021.

5.Thereafter, the orders of assessment were passed by the appellant herein on 15.07.2021. However, the same were passed without furnishing copies of the third party material to enable the respondent herein to reconcile the mismatch, in gross disregard to the procedure set out in Circular No.5 of 2021 dated 24.02.2021. Thereafter, the matters were listed on 10.08.2021 and an affidavit was filed on 12.08.2021, wherein the officer expressed unconditional apology for his failure to comply with the directions issued by the learned Judge *vide* order dated 16.04.2021.

6.Having dismayed over the repeated failure to comply with the directions issued, the learned Judge directed the Commercial Taxes Department to remit a costs of Rs.20,000/- for not imparting requisite training to the Authorities. While we agree with the learned Judge that the orders of the Assessing Authority leaves a lot to be decided, we would however think that the department cannot be found fault for the mistakes / illegalities / irregularities committed by the erring Authorities. This would be evident, if judicial notice is taken note of the fact that hundreds of orders of assessment have been made subsequent to the issuance of Circular No.5 of 2021 dated 24.02.2021 in compliance with the procedure set out therein.

7.We thus find that it may not be appropriate to chastise the department for the mistakes/ illegalities / irregularities committed by the individual officer and it must be the individual officer, who ought to face the consequences for his / her callous attitude / inefficiency.

8.In such view of the matter, we are inclined to modify the order of the learned Judge by directing the appellant herein to pay a costs of Rs.10,000/- in his individual / personal capacity to the Cancer Institute, Adyar, Chennai, within a period of two weeks from the date of receipt of a copy of this judgment.

9.Accordingly, all the writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]

22.01.2024

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

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To
The Deputy State Tax Officer,
Tirukoilur Assessment Circle,
Tirukoilur 605 757.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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W.A. Nos.777 to 780 of 2023

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