

(2014) 07 MAD CK 0123

In the Madras High Court

Case No : W.P. (MD) No. 892 of 2014, W.P. (MD) Nos. 893 to 895 of 2014 and
M.P. (MD) Nos. 1,1,1,1,2,2,2, and 2 of 2014

Kaesav Saw Mill

APPELLANT

Vs

The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 22(2), 27(2), 27(2)(iii)

Citation : (2014) 07 MAD CK 0123

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In all these writ petitions, the assessee is one and the same, viz., M/s. Kaesav Saw Mill and the challenge is to the revision of assessment orders for the assessment years 2007-08 to 2010-2011.

2. Since the facts are identical, it would suffice to refer to the averments made in W.P.(MD)No.892 of 2014. The petitioner is a dealer in timber and assessee on the files of the first respondent. They filed the returns under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the year 2007-08. Similar returns were filed for the other assessment years which were accepted and orders were passed. Subsequently, the first respondent issued notice under Section 27(2) of the Act proposing to revise the claim of Input Tax Credit and also proposing levy of penalty under Section 27(2)(iii) of the Act. It was alleged that an inspection was conducted in the place of business of the assessee and that the assessee had availed larger claim of Input Tax Credit, which were not entitled to and records were furnished regarding the actual movement of purchase bills such as lorry way bill, lorry receipt etc. Further, the Inspecting Officers observed that maximum purchases as well as their sales have been made in favour of four or five concerns and they were of the view that those were bogus purchases. It was further stated that though records were called for, the assessee has not produced the same and therefore, the proposal was made

to revise the Input Tax Credit claim. Similar proposals were made in respect of other assessment years. The assessee submitted their reply to the revision notice dated 13.03.2013 stating as follows:

a. Our entire sales are covered by proper tax invoice and the sales are also reported to you by filing proper monthly returns in Form-I along with Annexure-II.

b. Similarly, the purchasers are also reporting the purchases by way of filing the Form-I and showing their purchases in Annexure-I. There is no suppression or omission of sales turnover.

c. Further, there is no necessity for lorry way bills for the sale effected to sister concerns as they are situated close to our concern. We are only raising the voucher for labour charges for transferring the goods.

3. It is stated by the petitioner assessee that on 20.04.2013, they approached the first respondent and handed over certain documents such as lorry receipt voucher, purchase bills etc. and they also made a prayer to drop the proceedings. By impugned proceedings, the petitioner was assessed to tax and the proposal in the pre-revision notice was confirmed. On a perusal of the impugned proceedings, the petitioner came to know that the assessing officer confirmed the proposal solely based on the rejection of the deviation proposal (D3 Proposal) sent to the second respondent. The assessee would state that the deviation proposal sent by the first respondent was not within the knowledge of the assessee and it appears to have been an internal communication and when the petitioner sought for information from the first respondent under the provisions of the Right To Information Act, a reply was given to the petitioner dated 23.12.2013 stating that the entire particulars relating to rejection of the deviation proposal (D3 proposal) and they were dealt with only in the office of the second respondent. Therefore, it is evident that there was a D3 proposal forwarded by the first respondent to the second respondent which came to be rejected.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. The short point which falls for consideration is that what is the procedure to be followed by the assessing officer when D3 proposal is rejected and whether the assessing officer can straight away refer to the proposal and confirm the revision or whether the assessing officer has to deal with the assessment on merits? This question is no longer res integra and one of the decisions being in the case of Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in 146 STC 642 wherein the Hon"ble Division Bench observed as follows:

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.

Similar view has also been taken by this Court in W.P.No.20662 of 2012, dated 13.08.2012 and in CDJ 2012 MHC 5344 (M/s. Kaleesuwari Refinery Private Limited, rep. by its Director vs. The Assistant Commissioner (CT), Washermenpet II Assessment Circle and another).

6. The learned Additional Government Pleader appearing for the respondents vehemently contended that the proposal to revise the assessment is perfectly justified and the authority at the time of inspection found incriminating materials and there was sufficient reason to revise the assessment. Further, the order has been passed assigning reasons and if the petitioner is aggrieved, he should file an appeal against this order to the Appellate Deputy Commissioner (CT), Trichy and the writ petition is not the appropriate remedy.

7. After hearing the parties and perusal of the materials placed on record, it is to be pointed out that though there is availability of alternative remedy of appeal, that would not be an absolute bar in entertaining these writ petitions. In the light of the decision of the Hon'ble Division Bench of this Court, when the order is in violation of the principles of natural justice or without jurisdiction, this Court is not denuded of jurisdiction to exercise its powers under Section 226 of the Constitution of India.

8. On a perusal of the impugned assessment order, it is seen that the assessing

authority referred the averments made in the show cause notice and thereafter, it has proceeded to refer the deviation proposal (D3) given by the first respondent and proceeded to assess the petitioner and also levy penalty. Even in the D3 proposal, the second respondent while rejecting has directed the assessing officer to pass final orders based on the findings given in the rejection order. Therefore, if the assessing officer proposes to rely upon the findings recorded by the second respondent in the D3 proposal then, such material should have been made available to the petitioner prior to finalising the assessment and providing an opportunity to rebut the same. The same has not been furnished to the petitioner except for referring to such order in the impugned order of revision of assessment. Therefore, there is a total violation of principles of natural justice in these cases. That apart, no opportunity of personal hearing was afforded to the petitioner.

9. For all the above reasons, the impugned revision of assessments are liable to be interfered with by this Court. Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded back to the first respondent for fresh consideration. The second respondent is directed to furnish a copy of the deviation proposal to the petitioner and thereafter, the petitioner is entitled to submit his further explanation/objection on the said proposal to the first respondent and on receipt of the same, the first respondent shall afford an opportunity of personal hearing to the petitioner and pass order on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.