
(2013) 04 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No's. 12141 to 12146 of 2013 and M.P. No. 1 of 2013 in each W.P.

M/s. Ultra Tiles Pvt. Ltd.

APPELLANT

Vs

The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Value Added Tax Act, 2006 — Section 19, 19(3), 22, 27, 27(3)

Citation : (2014) 67 VST 162

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R.L. Ramani, for Mr. B. Raveendran, for the Appellant; Manoharan Sundaram, Govt. Advocate, for the Respondent

Judgement

V. Dhanapalan, J.—Heard Mr. R.L. Ramani, learned Senior Counsel appearing for the petitioner and Mr. Manoharan Sundaram, learned

Government Advocate appearing for the respondent. The petitioner-Company calls in question the notices of revision of assessment issued to them

u/s 27 of the Tamil Nadu Value Added Tax Act (for short, "the TNVAT Act") for the respective assessment years, calling upon them to file their

objections within 15 days of receipt of the notices and it is also observed in the impugned notices that for having a personal hearing, the petitioner-

dealer may appear before the respondent at 11 a.m. on any working day within the above period of time, failing which, orders will be passed as

proposed.

2. Short facts pleaded by the petitioner are as follows:

(a) The petitioner-Company is a registered dealer on the file of the respondent

and engaged in the manufacture of cement tiles. They purchase raw materials for the same on payment of tax from registered dealers within the State. The petitioner uses the raw materials in the manufacture of cement tiles and sells the cement tiles to various persons within the State as well as outside the State and claims Input Tax Credit (for short, "the ITC") on the amount of tax paid on the purchase of inputs in accordance with Section 19 of the TNVAT Act. The petitioner purchased capital goods like strapping machines, weighing scale, racking system, etc., that are necessary for manufacture of the cement tiles from registered dealers within the State on payment of tax. If the petitioner purchased these capital goods from the other States, they have to pay the tax @ 2%/3% only, but the petitioner paid tax @ 4% under the TNVAT Act and purchased these capital goods from registered dealers within the State in order to avail the ITC u/s 19(3) of the TNVAT Act.

(b) For the assessment years 2006-07 to 2011-12, the petitioner filed monthly Returns and paid appropriate taxes after claiming ITC. From October 2007, the Returns are being "e-filed" by the petitioner. For the assessment year 2008-09, the original assessment was completed by the respondent and deemed assessment order was passed by the respondent on 10.10.2011. For the assessment years 2006-07, 2007-08, 2009-10, 2010-11 and 2011-12, the petitioner is deemed to have been assessed by the respondent u/s 22 of the TNVAT Act on the basis of the Returns filed by them.

(c) The petitioner's place of business was inspected by the officers of the Enforcement Wing from 3.9.2012 to 5.9.2012 and 1.10.2012 and the Enforcement Wing Officers pointed out certain defects to the petitioner. The Enforcement Wing Officers prepared a statement that the petitioner is ineligible for ITC on capital goods, that the petitioner has to reverse the ITC on goods purchased within the State for non-production of purchase bills, that there was a difference between sales turnover as per Balance Sheet and that reported in the monthly Return, that the sales made on the strength of the certificate issued by the Development Commissioner, MEPZ cannot be claimed as exempted sales, etc. and instead, the petitioner signed the said statement as if it was correct and with an endorsement that the statement was "not accepted to be reconciled, signed under

protest". The petitioner has not accepted the alleged defects pointed out by the Enforcement Wing Officers. Even at the time of inspection, the

petitioner produced the original purchase bills and the Inspection Officers made tick marks on the same and signed on the bills.

(d) The respondent issued the impugned notices on two grounds, namely that the claim of exemption on sales return and exempted sales is

proposed to be disallowed on the ground that the petitioner had not furnished the details in the prescribed format. There is no format prescribed

under the TNVAT Act and Rule 7 of the TNVAT Rules prescribes that the monthly Return is to be filed in Form I along with proof of payment of

tax. The columns in the monthly Returns relating to sales return turnover and exempted sales turnover have been duly filled by the petitioner, which

has been accepted by the respondent in the impugned notices. However, the respondent proposed to disallow the exemption on the ground that

the details regarding the turnovers were not given in the prescribed format. When there is no format prescribed under the TNVAT Act, the

respondent cannot propose disallowance of exemption on the ground that the details were not given in the prescribed format, and therefore, the

revision of assessment is bad in law.

(e) The second ground on which the respondent proposed revision of assessment is that the Enforcement Wing Officers noticed defects at the time

of inspection. The respondent simply reproduced the statement recorded at the time of inspection and proposed a huge reversal of taxes, despite

the fact that the petitioner had not subscribed to the said statement at the time of inspection. The respondent proposed to disallow the entire ITC

on the local purchases on the ground that the original purchase invoices were not produced. Such an allegation has been made despite the fact that

the Enforcement Wing Officers verified the purchase invoices. The Enforcement Wing Officers are not the assessing officer and therefore, revision

of assessment cannot be proposed on the ground that invoices/records were not produced before the Enforcement Wing Officers. If at all the

respondent wants to peruse the records, the respondent ought to have issued a summons for production of the books of accounts and thereafter, if

the respondent finds any defects, they could issue a proposal for revision of assessment and they cannot directly propose the revision of

assessment on the basis of the report of the Enforcement Wing Officers without independently examining the issue and propose a huge assessment

simply to harass the petitioner and with the sole aim of following the instructions of the Enforcement Wing Officers. The petitioner duly maintained

all their accounts and are always ready and willing to produce the same for examination by the respondent independently. However, the

respondent simply followed the Enforcement Wing Report and proposed to reverse the ITC which the petitioner is legally entitled to.

(f) The petitioner-Company duly filed their Returns, maintained their accounts properly and paid appropriate taxes. To the impugned notices issued

by the respondent, the petitioner filed their reply/objections on 26.2.2013 and also filed all voluminous records on 12.3.2013. The officer of the

petitioner-Company also personally met the respondent several times and requested them to verify the records that are lying in their office and that

if further details are required, further time may be granted. However, the respondent has not verified the records and insisting on the petitioner to

make payment as per the report of the Enforcement Wing Officers without any independent adjudication whatsoever. In the impugned notices, the

respondent clearly stated that, ""During the time of Surprise inspection by the Officers of the Department, it was noticed that the dealers had not

produced the original purchase invoices for which ITC availed by them...", which clearly shows that the original assessment is now sought to be

reopened on the basis of the D-3 proposals received from Enforcement Wing Officers.

(g) The re-assessment proceedings are liable to be set aside in the light of the law laid down by the Apex Court as well as the Division Bench of

this Court.

(h) The Enforcement Wing Officers are not the assessing officers of the petitioner and they cannot frame the assessment. It is the respondent who

is the assessing officer of the petitioner and as a quasi-judicial authority, it is incumbent upon the respondent to make an assessment/re-assessment

with a fresh mind and not be influenced by the report of the Enforcement Wing Officers. There will be irreparable harm and hardship to the

petitioner, if the respondent confirms the proposal of revision of assessment. Hence, the petitioner has filed these Writ Petitions for the above relief.

3. The petitioner-Company is challenging the impugned notices on the ground that the respondent erred in proposing disallowance of exemption on

sales return and exempted sales on the alleged ground that the details regarding the same were not given in the prescribed format, when there is no

format prescribed under the TNVAT Act for the same. The action of the respondent in blindly adopting the D-3 proposals is against the law laid

down by the Apex Court in the decision reported in Mahadaya Premchandra Vs. Commercial Tax Officer, Calcutta and Another, and the

decision of the Division Bench of this Court reported in Madras Granites (P) Ltd. Vs. Commercial Tax Officer and Another,

4. On the above background of pleadings, learned Senior Counsel appearing for the petitioner submitted that the impugned notices of revision of

assessment are contrary to the established law and not sustainable, because the Enforcement Wing Officer cannot frame the assessment and the D-

3 proposals cannot be simply adopted by the respondent without application of mind. In support of his submissions, he relied on the decision of the

First Bench of this Court in W.A. Nos. 521 and 522 of 2013, dated 25.3.2013.

5. On the other hand, the learned Government Advocate appearing for the respondent submitted that the impugned revision notices are issued u/s

27 of the TNVAT Act, which also deal with the proposal for levy of penalty u/s 27(3) of the TNVAT Act. He further submitted that as per the

impugned notices, the petitioner has been given an opportunity of being heard and file objections, and without approaching the respondent, the

petitioner has rushed to this Court by filing these Writ Petitions, which are not maintainable.

6. It is seen that the petitioner-Company is a registered dealer on the file of the respondent and engaged in the manufacture of cement tiles. They

purchase raw materials for the same on payment of tax from registered dealers within the State. The petitioner uses the raw materials in the

manufacture of cement tiles and sells the cement tiles to various persons within the State as well as outside the State and claims ITC on the amount

of tax paid on the purchase of inputs in accordance with Section 19 of the TNVAT Act. The petitioner purchased capital goods like strapping

machines, weighing scale, racking system, etc., that are necessary for manufacture of the cement tiles from registered dealers within the State on

payment of tax. If the petitioner purchased these capital goods from the other States, they have to pay the tax @ 2%/3% only, but the petitioner

paid tax @ 4% under the TNVAT Act and purchased these capital goods from registered dealers within the State in order to avail the ITC u/s

19(3) of the TNVAT Act. The petitioner's place of business was inspected by the officers of the Enforcement Wing from 3.9.2012 to 5.9.2012

and 1.10.2012 and the Enforcement Wing Officers pointed out certain defects to the petitioner. The Enforcement Wing Officers prepared a

statement that the petitioner is ineligible for ITC on capital goods, that the petitioner has to reverse the ITC on goods purchased within the State for

non-production of purchase bills, that there was a difference between sales turnover as per Balance Sheet and that reported in the monthly Return,

that the sales made on the strength of the certificate issued by the Development Commissioner, MEPZ cannot be claimed as exempted sales, etc.

and instead, the petitioner signed the said statement as if it was correct and with an endorsement that the statement was ""not accepted to be

reconciled, signed under protest"". The petitioner has not accepted the alleged defects pointed out by the Enforcement Wing Officers. Even at the

time of inspection, the petitioner produced the original purchase bills and the Inspection Officers made tick marks on the same and signed on the

bills.

7. The respondent issued the impugned notices on two grounds, namely that the claim of exemption on sales return and exempted sales is

proposed to be disallowed on the ground that the petitioner had not furnished the details in the prescribed format. There is no format prescribed

under the TNVAT Act and Rule 7 of the TNVAT Rules prescribes that the monthly Return is to be filed in Form I along with proof of payment of

tax. The columns in the monthly Returns relating to sales return turnover and exempted sales turnover have been duly filled by the petitioner, which

has been accepted by the respondent in the impugned notices. However, the respondent proposed to disallow the exemption on the ground that

the details regarding the turnovers were not given in the prescribed format. When there is no format prescribed under the TNVAT Act, the

respondent cannot propose disallowance of exemption on the ground that the details were not given in the prescribed format, and therefore, the

revision of assessment is bad in law.

8. The second ground on which the respondent proposed revision of assessment is that the Enforcement Wing Officers noticed defects at the time of inspection. The respondent simply reproduced the statement recorded at the time of inspection and proposed a huge reversal of taxes, despite the fact that the petitioner had not subscribed to the said statement at the time of inspection. The respondent proposed to disallow the entire ITC on the local purchases on the ground that the original purchase invoices were not produced. Such an allegation has been made despite the fact that the Enforcement Wing Officers verified the purchase invoices. The petitioner alleges that the Enforcement Wing Officers are not the assessing officers and therefore, revision of assessment cannot be proposed on the ground that invoices/records were not produced before the Enforcement Wing Officers. The petitioner contends that if at all the respondent wants to peruse the records, the respondent ought to have issued a summons for production of the books of accounts and thereafter, if the respondent finds any defects, they could issue a proposal for revision of assessment and they cannot directly propose the revision of assessment on the basis of the report of the Enforcement Wing Officers without independently examining the issue and propose a huge assessment simply to harass the petitioner and with the sole aim of following the instructions of the Enforcement Wing Officers. The petitioner duly maintained all its accounts and always ready and willing to produce the same for examination by the respondent independently. However, the respondent simply followed the Enforcement Wing Officers' Report and proposed to reverse the ITC which the petitioner is legally entitled to.

9. The petitioner-Company claims that they have filed their Returns, maintained their accounts properly and paid appropriate taxes. To the impugned notices issued by the respondent, the petitioner filed their reply/objections on 26.2.2013 and also filed all voluminous records on 12.3.2013. The petitioner-Company further claims that their officer also personally met the respondent several times and requested them to verify the records that are lying in their office and that if further details are required, further time may be granted. However, the petitioner alleges that the respondent has not verified the records and insisting on the petitioner to make

payment as per the report of the Enforcement Wing Officers without any independent adjudication whatsoever. In the impugned notices, the respondent clearly stated that, ""During the time of Surprise inspection by the Officers of the Department, it was noticed that the dealers had not produced the original purchase invoices for which ITC availed by them..."", which clearly shows that the original assessment is now sought to be reopened on the basis of the D-3 proposals received from Enforcement Wing Officers. Since the petitioner alleges that there will be irreparable harm and hardship to them, if the respondent confirms the proposal of revision of assessment, they have filed these Writ Petitions.

10. The legality of the impugned notices, has been called in question on the ground that the Enforcement Wing Officers cannot act as Assessing Officers and frame the revision of assessment, and therefore, the D-3 proposals cannot be simply adopted by the respondent without application of mind and as a quasi-judicial authority, it is incumbent upon the respondent to make an assessment/re-assessment with a fresh mind and not be influenced by the report of the Enforcement Wing Officers.

11. With regard to the power of this Court in interfering with the notice, the following principles have to be noted:

(a) It is settled legal principle that when a notice is issued to a person/dealer with an opportunity of being heard by calling upon them to file objections within a time frame, it is for the person/dealer to file objections, and only thereafter, the relevant proposal stated in the said notice will be implemented.

(b) Before taking recourse to file a Writ Petition challenging a notice, when an opportunity is given to the person/dealer to file objections to the notice in respect of a proposal, the same has to be availed of by the person/dealer aggrieved by the said notice.

(c) It is trite law that if the notice issued by the authority is in violation of the fundamental rights guaranteed under the Constitution of India; violation of the principles of natural justice; ultra-vires the provisions of the relevant law; grave error in the notice and miscarriage of justice, then the question of waiving the alternative remedy will arise and this Court, under Article 226 of the Constitution of India, could invoke the Writ jurisdiction and interfere with such notice issued by the authority.

12. In this case, no grave injustice is meted out to the petitioner and there is not even any infringement of fundamental rights. Even in respect of the

following the principles of nature justice, it is seen that the respondent rightly offered an opportunity of being heard by asking the petitioner to file

their objections to the impugned notices. Hence, it is not for the petitioner to hastily come to this Court in the stage of notice.

13. In the present case, the petitioner-Company has not availed of the opportunity given to them by filing objections to the impugned notices. The

grievance of the petitioner has to be adjudicated only before the authority concerned. The approach of the petitioner in rushing to this Court by

filing these Writ Petitions, challenging the notices "simpliciter", without even filing the objections before the respondent, cannot be sustained.

14. At this stage, the learned Senior Counsel appearing for the petitioner pointed out the observations made by the First Bench of this Court in the

said W.A. Nos. 521 and 522 of 2013, dated 25.3.2013, which are to the effect that ""As the communication dated 5.10.2012 is an advisory

issued to the respondents, while considering the objections to be filed by the appellant, the appropriate respondent is directed to bear in mind the

provision of law and take a decision, without being influenced by the Advisory dated 5.10.2012"".

15. Therefore, the impugned proposal of the respondent for revision of assessment, is subject to the consideration of the objections to be filed by

the petitioner, and only after receipt of the objections, the respondent could form any opinion in accordance with law. The claim of the petitioner

that the Enforcement Wing Officers' report cannot form the basis for the impugned revision of assessment and he has no role to act as Assessing

Officer and the respondent cannot simply adopt the D-3 proposal, are all matters for concern before the respondent on filing the objections by the

petitioner.

16. At this stage, the learned Senior Counsel appearing for the petitioner stated that the petitioner has already filed objections dated 26.2.2013

before the respondent with regard to the impugned notices. In the light of the above stated position and considering the facts and circumstances of

the case and the submissions made by the learned counsel appearing for the parties, these Writ Petitions are disposed of, with a direction to the

respondent to consider the said objections, dated 26.2.2013 filed by the petitioner, afford an opportunity of hearing to the petitioner, bear in mind

the provision of law and thereafter take a decision uninfluenced by the report of the Enforcement Wing Officers and pass appropriate orders, on

merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. The Miscellaneous

Petitions are closed.