IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.11884 of 2015 and
M.P.Nos.1 & 2 of 2015

M/S Ran India Steels(P) Ltd. ..... Petitioner
Rep by its Executive Director - R.Nagarajan
Ayyappa Tower 1st Floor C.H.B.Colony
Velur Road Tiruchengode - 637 211
Namakkal District.

Vs

1 The Assistant Commissioner(CT)
(ENF) Namakkal.

2 The Commercial Tax Officer(FAC)
Tiruchengode (Town) circle Tiruchengode. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the 1st respondent in Roc.No.95/2015/A2 dated 20/03/2015 and quash the same as illegal and contrary to the provisions of the TNVAT Act 2006.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.V.Haribabu, AGP (Taxes)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondents.

2.The writ petition is filed challenging the impugned order issued by the Assistant Commissioner(CT), (ENF) Namakkal, the 1st respondent herein dated dated 20/03/2015 in Roc.No.95/2015/A2.

3. Mr.S.Rajasekar, learned counsel for the petitioner would submit that the impugned order is liable to be set aside on the ground that the 1st respondent has no power of assessment, since the same has been conferred on the jurisdictional assessing authority viz., the 2nd respondent herein. Therefore, it is not open to the 1st respondent to exercise his powers in the guise of the impugned proceedings to conduct an independent demonstration, which is not

permissible under law.

4. The learned counsel for the petitioner placed an illustration to support his contention that when the assessee is having two units presumably one at Parrys Corner and another Unit at T.Nagar, and the assessee having registered his entire business transactions at the office of the Parrys Corner, pursuant thereto, when he has been submitting his returns for the assessment years only in the Parrys Corner jurisdiction, the Enforcement Officer in the T.Nagar Branch Office has no jurisdiction, as it is always open to the Assessing Officer at Parrys Corner to do the inspection as per law. The Enforcement Wing at T.Nagar has no authority or power to undertake inspection and visit at the office of the assessee situate at T.Nagar.

5. The learned counsel for the petitioner would further submit that in similar circumstances, when an identical issue came up for consideration before this Court, in a batch of writ petitions in W.P.Nos.13901, 30851 to 30880 of 2013 etc. batch cases, this Court, by order dated 26.11.2014, in paragraph No.63(3), while answering the similar issue has held that the assessing officer alone is to embark upon the fact finding exercise to ascertain the quantum of loss of the goods. Therefore, no prejudice would be caused to the Assessing Officer to visit the place of business of the petitioner, but not by the 1st respondent.

6. Mr.V.Haribabu, learned Additional Government Pleader (Taxes) appearing for the respondent also finding that the issue raised by the petitioner is covered by the decision of this Court, as rightly mentioned by the petitioner in W.P.Nos.13901, 30851 to 30880 of 2013 etc. batch cases dated 26.11.2014, left open to the Court and requested to pass appropriate orders directing the 2nd respondent, who is the Assessing Officer to undertake the exercise, if at all required.

7. At this juncture, it is useful to extract below the relevant portion of the order of this Court rendered in W.P.Nos.13901, 30851 to 30880 of 2013 etc. batch cases dated 26.11.2014.

> "(3) For the reasons assigned, it is not sufficient for a dealer claiming refund under Section 18(2) of the Act to show that he has paid input tax on the goods purchased; that those goods are used in the manufacture and nothing more but there is duty upon the dealer to satisfy the Assessing Authority that the claim is not hit by any of the restrictions or conditions contained under Section 19 of the VAT Act. In this regard, it is essential for the Assessing Authority to embark upon the fact finding exercise to ascertain the quantum of loss of the goods which were purchased on which tax was paid vis-a-vis the

goods manufactured from and out of the goods purchased and to examine as to whether they fall within any of the restrictions contained in Section 19 of the VAT Act. The Assessing Officer has to conduct an exercise by which it is to be ascertained as to whether the representation made by the dealer is justified and is not hit by any any of the restrictions and conditions contained in Section 19 and in particular Section 19(9) of the VAT Act".

8. Admittedly, in the present case, the Assistant Commissioner (CT), (ENT) Namakkal, the 1st respondent herein, has issued the impugned notice. When the petitioner has admittedly submitting the assessments only to the 2nd respondent at Tiruchengode, the 1st respondent, who is an official of the Enforcement Wing of the Commercial Tax Department, cannot embark upon fresh demonstration of the petitioner premises with the aid of the central excise department and the electricity board officials. It is also an admitted fact that the 2nd respondent who is the jurisdictional assessing officer of the petitioner has also conducted an inspection at their factory premises on 27.09.2012 and after spending the whole day in assessing the actual burning loss and the actual consumption of electricity, after inspection, arrived at a finding and based on the finding the 2nd respondent has also framed assessment for the years 2006-07 to 2008-09. Therefore, it is not open to the 1st respondent to undertake any inspection in the guise of demonstration to make assessment for the years 2009-10 to 2011-12.

9. This Court finds merits in the contention of the learned counsel for the petitioner. As noted earlier, admittedly, the petitioner having engaged in the manufacture of TMT Bars and allied products, is an assessee on the files of the Commercial Tax Officer (FAC), Tiruchengode (Town) Circle, Tiruchengode, the 2nd respondent herein. It is not in dispute that the 2nd respondent visited the petitioner's premises on 27.09.2012 to monitor and study the actual manufacturing process to ascertain the exact burning loss incurred in the process of manufacture and the actual consumption of electricity in production. After spending the whole day in the factory premises of the petitioner, the Assessing Officer, taking note of the various parameters arrived at a finding with regard to the issue of burning loss in the process of manufacture and the actual consumption of electricity in production. That apart, when the petitioner has registered with the 2nd respondent, it is not proper on the part of the 1st respondent to have access to the documents of the petitioner that are available with the 2nd respondent. Besides, as this Court has also in the aforesaid decision cited supra ( W.P.Nos.13901, 30851 to 30880 of 2013 etc. batch cases dated 26.11.2014) has held that the Assessing Officer alone to embark upon the fact finding exercise to ascertain the quantum of loss of the goods, the petitioner is justified in making a prayer not to permit the 1st respondent to undertake any visit on the premises of the petitioner.

10. Therefore, this writ petition stands allowed and the impugned communication dated 20.03.2015 of the 1st respondent, requesting the Superintendent, Central Excise Department, Namakkal and the Assistant Executive Engineer, Mallar Sub Division, to depute a responsible officer to attend the work with respect to trial production is quashed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1 The Assistant Commissioner(CT)
(ENF) Namakkal.

2 The Commercial Tax Officer(FAC
Tiruchengode (Town) circle Tiruchengode.

1 cc to Mr.R.Hemalatha , Advocate Sr.No.26597
1 cc to Spl Government Pleader(Taxes).Sr.No.26971

W.P.No.11884 of 2015

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pmk.30.6.2015