IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2688 to 2692 of 2015

Tvl.Firoze Fabricators,
rep. by its Managing Partner
K.P.Khader Hussain .. Petitioner in all cases

Vs.

1.The Joint Commissioner (CT),
C.T.Building, Salem Division,
Salem.

2.The Assistant Commissioner (CT),
Omalur Assessment Circle, Omalur. .. Respondents in all cases

Prayer in all cases:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the first respondent in L.Dis.4637/2014/A8 dated 19.09.2014 and connected proceedings of the second respondent in TIN. No.33703240234/2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively dated 23.12.2014, 16.12.2014, 29.12.2014 in so far as the assessment years 2009-2010, 2010-11, 2011-12, 2012-13 and 2013-14 respectively are concerned only and quash the same as being without jurisdiction and authority of law.

For Petitioner in all cases : Mr.R.Senniappan

For Respondents in all cases : Mr.Kanmani Annamalai
Addl.Govt.Pleader (T)

C O M M O N O R D E R

The Writ Petitioner has come forward with the aforesaid prayer, challenging the proceedings of the second respondent in TIN. No.33703240234/2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively dated 23.12.2014, 16.12.2014, 29.12.2014 in so far as the assessment years 2009-2010, 2010-11, 2011-12, 2012-13 and 2013-14 respectively are concerned only and to quash the same as being without jurisdiction and authority of law.

2.Heard both sides.

3.The petitioner submits that more than 20 notices have been sent for the assessment years 2009-10 to 2013-14 (5 assessment years) and the petitioner has made representations stating that they have already submitted the details sought for by the officer and without considering the same, the authorities started issuing notices one after the another. Learned counsel for the petitioner further submitted that request made by the petitioner to transfer the cases to some other officer, was not considered, as they made some allegations against them and the Officer concerned has placed the requisition for complaint to the very same officer, who has passed that order. According to him, the respondents have no jurisdiction under Section 22(4) of the Tamil Nadu Value Added Tax Act and if there is any escaped assessment, they will have to invoke Section 27 of the Act. Learned counsel for the petitioner further submitted that still the authorities, for some reasons or other, started issuing notices, which according to the petitioner is nothing, but, harassment.

4.Learned Additional Government Pleader would fairly submit that the averments against the officer, may not be true. But, he fairly stated that when several notices have been issued in respect of the petitioner's representation, the concerned officer should have restrained himself and should ask some other officer to pass orders to avoid embarrassment to him.

5.This Court finds that if there are any escaped assessment, the petitioner is duty bound to pay the same. It may be decided by the authority concerned. Since it is a peculiar case where allegation has been made against the officer concerned and that first respondent has forwarded his request for complaint to the very same officer against whom the complaint has been made, the matter may be heard by another officer, who may be nominated by the Principal Commissioner, Commercial Tax.

6.Having heard both parties, I am of the view that even though the Commissioner is not a party to the proceedings, while setting aside the impugned order, I remit the matter to the Principal Commissioner, Commercial Tax, who shall nominate an officer, than the assessment officer, who passed an order and the person, who has forwarded the complaint to the very same officer. New officer shall decide the issue independently not influenced by any of the observations made in the impugned order that has been set aside by this Court.

7.It is open to the petitioner to make fresh objections/ additional objections, if any, before the new officer, who is going to be nominated by the Principal Commissioner, Commercial Tax, within the time stipulated by him and on a specific date of personal hearing, the petitioner shall appear before the authority. If the petitioner failed to avail that opportunity, it is open to the new officer to pass appropriate orders, on merits and in accordance with law. The impugned orders are set aside and the writ petitions are allowed. No costs. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrarvga

To

1.The Joint Commissioner (CT),
C.T.Building, Salem Division,
Salem.

2.The Assistant Commissioner (CT),
Omalur Assessment Circle, Omalur.

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pmk.12.2.2015