IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.2983 to 2987 of 2015
And
M.P.Nos.1 & 2 of 2015

M/s.Mookambikai Spinners ..Petitioner in all the petitioner

Rep.by its Partner-K.A.Mohan Kumar
No.7/45 Chinna Thottam
Kannampalayam
Sulur 641 402 Coimbatore

Vs

The Commercial Tax Officer
Palladam Assessment Circle Palladam Respondent in all the petitioner

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN NO.33236243176/2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 respectively dated 18.12.2014 quash the same.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mr.Cibi Vishnu, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

2. The petitioner has come forward with this writ petition challenging the orders of the respondent dated 18.12.2014.

3. According to Ms.Hemalatha, learned counsel for the petitioner, the case of the petitioner is that the petitioner is the manufacturer of hank yarn. In the month of January 2014, the business place of the petitioner was inspected by the Enforcement Wing Officers and during the course of inspection, it was found that the provision for manufacturing of Hank Yarn with Nine reeling machine were not in running condition and hence it was observed that they have not manufactured Hank Yarn for a long time. But the petitioner declared in the monthly returns filed as sale of Hank Yarn

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every month instead of Cone Yarn. Based on the inspection report submitted by the Enforcement Officer, the respondent issued pre-revision notices, stating that the petitioner is only manufacturing Cone Yarn, but not Hank Yarn and also selling that Cone Yarn in the guise of Hank Yarn. The respondent proposed to revise the assessment accordingly. The petitioner had filed their objections contending that the assessing officer should not rely upon the inspection report but independent enquiry is necessary. The learned counsel for the petitioner further submitted that there is no suppression on the alleged facts and the proposed revision is unwarranted. She further submitted that without considering their objections, relying on the inspection report, the impugned orders have been passed and hence the same have got to be set aside.

4. The learned counsel for the petitioner relying upon a decision of this Court reported in [2007] 9 VST 478 (Mad) (Amutha Metals vs. Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai would contend that under the statutory provisions, it is expected from the assessing officer to consider the objections to the proposals in the pre-assessment notice and either accept or reject them giving valid reasons by applying his mind and the order of assessment in that case was set aside taking into account the proposal of the Enforcement Officer and hence this Court directed the Assessing Officer to consider the objections raised by the petitioners therein.

5. A perusal of the decision cited supra would make it clear that even though there was an alternative remedy available under the statute, the learned Judge held that the Court intends to interfere with the assessment orders on the ground that there was manifestation of carelessness and callousness with which the assessment orders have been passed. In the case on hand, a glance on the impugned orders would clearly show that the authority has passed independent orders. Even assuming for the sake of argument that the Enforcement wing Report has been referred to in the impugned orders, that is not the basis for passing of the impugned orders. Hence, the decision quoted by the petitioner is not applicable to the facts of this case.

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6. In view of the same, this Court is not inclined to interfere with the orders of assessment under Article 226 of the Constitution of India when an alternative remedy is very much available and this is not a case falling within the exception to invoke the extraordinary jurisdiction of this Court.

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7. Hence, I find no merit in the writ petition. Hence, the same is dismissed. However, it is open to the petitioner to avail the appellate remedy before the Deputy Commissioner (CT), Pollachi, within the time stipulated under the Act, if so advised. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Palladam Assessment Circle Palladam

+ 5 ccs to M/s. R. Hemalatha, Advocate SR.6318
+ 1 cc to the Government Pleader Sr.6470

W.P.2983 to 2987 of 2015

MP(CO)
Eu 25.02.15

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