IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.7564 of 2015
and
MP.No.1 of 2015

M/s.Arkema Peroxides India Pvt. Ltd.,
rep. by its Authorised Signatory .. Petitioner

Vs.

1.The Joint Commissioner (CT),
Enforcement-II,
Chennai-600 006.

2.The Deputy Commissioner (CT),
Enforcement (East),
Chennai-600 008.

3.The Commercial Tax Officer,
Group-II, Enforcement (East),
Greams Road, Chennai-600 006.

4.The Assistant Commissioner (CT),
Mylapore Assessment Circle,
Chennai. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second respondent in his proceedings in I.F.Sl.No.185/2014-15 and to quash the intimation dated 31.12.2014 issued therein.

For Petitioner : Mr.R.L.Ramani,
Senior counsel for
Mr.B.Raveendran

For Respondents : Mr.Kanmani Annamalai
AGP (T)

ORDER

The petitioner has come forward with the aforesaid prayer.

2.According to the petitioner, the Joint Commissioner of Commercial Taxes, Enforcement has no power to order Audit of the business of any registered dealer. He would contend that as per provisions of Section 64(4) of the Tamil Nadu Value Added Tax Act, the Commissioner of Commercial Taxes alone is empowered to order VAT audit of any registered dealer. The petitioner also relied upon an interim order passed by the Madurai Bench of Madras High Court, which reads as follows:

> "There shall be an order of interim stay of the order passed by the learned Single Judge, dated 03.10.2013, insofar as it relates to the direction issued by him, granting liberty to the Commissioner (CT), Chennai to delegate similar power to an officer not below the rank of Deputy Commissioner (CT), in terms of Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006."

3.Learned Additional Government Pleader appearing for the respondents would contend that if there would be any note in the file, it will enable the authority to do audit inspection of any registered dealer.

4.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

5.Though the respondents has not produced any document to prove the contention of the respondents and it may be correct that there may be instruction in the office note, a reading of the impugned order would show that the Joint Commissioner has authorised to do the audit of the business of the registered dealer viz. the petitioner and the same is not stipulated under Section 64 (4) of the Tamil Nadu Value Added Tax Act, which reads as follows:

> "Section 64(4) The Commissioner may order audit of the business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Officer. For the purpose of this Section, the selection of dealers for audit shall be made amongst the dealers -
> 64(4)(a)who have not filed returns within the prescribed period; or
> 64(4)(b)who have claimed exorbitant amount of refund of tax; or
> 64(4)(c)who have filed returns, but in the opinion of the Commissioner he is not satisfied with the correctness of any return filed, any claim made, deduction claimed or turnover disclosed in any such return; or
> ...."

6.In view of the aforesaid provision, I have no other option instead to accept the contention of the petitioner and I set aside the impugned order. It is open to the Commissioner to order audit inspection, if so required.

7.Accordingly, the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Commissioner (CT),
Enforcement-II,
Chennai-600 006.
2.The Deputy Commissioner (CT),
Enforcement (East),
Chennai-600 008.
3.The Commercial Tax Officer,
Group-II, Enforcement (East),
Greams Road, Chennai-600 006.
4.The Assistant Commissioner (CT),
Mylapore Assessment Circle,
Chennai.

+ 1 cc to Mr.B. Raveendran, Advocate SR.15338

+ 1 cc Special Government Pleader Sr.15699

SAI(CO)
EU 07.04.2015

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