IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.6.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.18762 to 18764 of 2016

M/s.Sneh Communication, rep.
by its Manager Jitendra Jain,
No.25, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai 600 024. ... Petitioner

Vs

The Assistant Commissioner (CT),
Kodambakkam Assessment Circle,
No.1, C-7, Building Annexe,
4th Floor, Greams Road,
Chennai - 600 006. ... Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus directing the respondent to consider the elaborate replies dated 16.2.2015, 17.2.2015 and 20.2.2015 and the materials filed by the petitioner to the Enforcement Wing in respect of the slips issued and further replies respectively (i) dated 5.6.2015 and 12.5.2016 and the materials filed to the respondent and in pursuance of the revision notice dated 13.5.2015 issued for TIN/33071404807/2012-13 (WP.No.18762 of 2016) (ii) dated 24.6.2015 and 12.5.2016 and the materials filed to the respondent and in pursuance of the revision notice dated 12.5.2015 issued for TIN/33071404807/2013-14 (WP.No.18763 of 2016) and (iii) dated 8.1.2016 and 12.5.2016 and the materials filed to the respondent and in pursuance of the revision notice dated 18.11.2015 issued for TIN/ 33071404807/2014-15 (WP.No.18764 of 2016), all under the Tamil Nadu Value Added Tax Act based on the inspection report received from Enforcement Wing and further direct the respondent to proceed in an independent and unbiased manner without being influenced by the inspection report and submit a deviation report to the Enforcement Wing in respect of proposals, which were found to be based on incorrect figures and not in conformity with law as per the circular instructions of the Principal Secretary/ Commissioner of Commercial Taxes in Circular No.Q3/3259/2010 dated 14.6.2010.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In all these writ petitions, the petitioner seeks a direction to the respondent - Assessing Officer to consider their objections dated 16.2.2015, 17.2.2015 and 20.2.2015 and the materials filed by the petitioner to the report of the Inspection Wing in respect of the slips issued and the further replies given by the petitioner on 5.6.2015, 12.5.2016, 24.6.2015, 12.5.2016, 8.1.2016 and 12.5.2016 and to direct the respondent to proceed with the matter independently without in any manner being influenced by the inspection report.

3. The learned counsel for the petitioner submitted that the respondent, solely based upon the surprise inspection conducted by the Inspection Wing in the place of business of the petitioner, straightaway issued notices to the petitioner in respect of the assessment years 2012-13, 2013-14 and 2014-15. On receipt of the notices, the petitioner submitted elaborate replies separately for each of the assessment years, followed by reminders and it is almost one year that the respondent has neither called for the petitioner to produce the books of accounts nor taken any action in the matter. The petitioner apprehends that straightaway, the respondent would pass an order.

4. The learned Additional Government Pleader appearing for the respondent would submit that the respondent will act in accordance with law, proceed independently and discharge his statutory duty as an Assessing Officer.

5. The manner, in which, the Assessing Officer has to act, has been pointed out by the Hon'ble Division Bench of this Court in the case of Madras Granites (P) Ltd. Vs. C.T.O., Arisipalayam Circle [(2006) 146 STC 642], which was followed by me in the case of Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri [(2015) 81 VST 560]. 6. The relevant portion in the decision in (2006) 146 STC 642 (cited supra) reads as follows :

"It is well settled that the Assessing Officer is a quasi judicial authority and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. However, it is found that in both the matters, the Assessing Officer has acted on the basis of the directions of the higher authority in completing the assessment. We hold that the assessments are not sustainable in law."

7. This Court pointed out in the decision reported in (2015) 81 VST 560 (cited supra), that the Assessing Officer cannot be solely guided by the proposals given by the Inspecting Officers, but has to independently apply his mind and discharge duties enshrined on the Assessing Officer under the provisions of the Act, otherwise it would amount to abdication of the statutory duties. Therefore, the petitioner is justified in apprehending that the Assessing Officer would straightaway proceed and complete the assessment solely on the report given by the Enforcement Wing.

8. However, as pointed out earlier, the Assessing Officer, being a Statutory Authority, has to independently apply his mind and afford a reasonable opportunity to the petitioner, direct them to produce the books of accounts, verify all the details and thereafter complete the assessment.

9. In the light of the above, the writ petitions are disposed of with a direction to the respondent to consider the replies and the reminders given by the petitioner in respect of the notices issued for all the three assessment years, afford an opportunity of personal hearing, call for the books of accounts, verify the same and if any clarification is required, direct the petitioner to clarify and thereafter independently proceed to complete the assessment as expeditiously as possible. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Kodambakkam Assessment Circle,
Greams Road,
Chennai-6.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.29436
+1cc to the Special Government Pleader(T), S.R.No.29942

W.P.Nos.18762 to 18764 of 2016

KGK(CO)
CA(08/06/2016)