IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 16.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25572 to 25577 of 2015

Tvl.Dee Tech Projects Pvt.
Ltd. rep. by its Managing Director
Mr.Sivaraman, No.129 Aani Street, 2nd Floor ,
Chinmaya Nagar Chennai-92 ... petitioner
[in all WPs.]

versus

1 The Assistant Commissioner [CT]
No.57, Amindakarai Assessment Circle,
Taylors Road, Dowlath Towers, 7th Floor,
Kilpauk Chennai-10

2 The Deputy Commissioner[CT],
Zone VIII, PAPJM Building, Greams Road,
Chennai-6 ... respondents
[in all WPs.]

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of 1st respondent assessment proceedings in TIN 33531024217/2011-2012, 2009-2010, 2008-2009, 2007-2008, 2012-2013 and 2010-2011 respectively dated 27.5.2015 and quash it as illegal unlawful and unconstitutional and direct the 1st respondent to pass the assessment order afresh after affording an opportunity of personal hearing to the petitioner

For petitioner ... Mr.M.Desingu
For respondents ... Mr.Manokaran Sundaram, A.G.P.

COMMON ORDER

Heard Thiru.M.Desingu, learned counsel for the petitioner and Thiru.Manokaran Sundaram, learned Additional Government Pleader for the respondents.

2. The petitioner is a civil works contractor, registered on the file of the respondent as a dealer, under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these Writ Petitions, the petitioner has challenged the orders of assessment passed by the first respondent for the years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13.

3. The learned counsel for the petitioner submitted that merits of the matter need not be gone into, and this Court may examine the correctness of the impugned orders of assessment taking note of the manner in which the Assessing Officer has

proceeded to decide the matter. A surprise inspection was conducted in the place of business of the petitioner on 26.1.2013, 27.12.2013, 30.12.2013, 31.12.2013 and 9.1.2014 and certain defects were noted, based on which, notice was issued to the petitioner. The petitioner submitted their objections to the same. The Assessing Officer viz., the first respondent, applied her mind and considered the objections raised by the petitioner and as she was satisfied with the objections raised by the petitioner, submitted a deviation report to the second respondent. However, the second respondent rejected the deviation report and directed the first respondent to assess the petitioner to tax and also levy penalty. In the light of the said order passed by the second respondent, the first respondent was compelled to pass the impugned assessment order by stating that in the light of the order passed by the second respondent, the petitioner's contentions are not acceptable.

4. The question is as to whether the Assessing Officer could take such a stand and what is the manner in which the Assessing Officer has to function. This issue is no longer res integra and that has been decided by the Hon'ble Division Bench in the case of Madras Granites (P) Ltd. vs. Commercial Tax Officer and Anr. [2006 146 STC 642 (Madras)] and similar view has been taken in other decisions as well. In fact, I had an occasion to consider similar matter in a batch of cases in W.P.No.892 of 2014 batch dated 17.7.2014, in the case of Mrs.Kesav and others vs. Assistant Commissioner, C.T. Thiruverumbur Assessment Circle and anr., and after referring to the decision of the Hon'ble Division Bench, the Writ Petitions were allowed. At this stage, it would be useful to refer to the operative portion of the order.

> 8.On a perusal of the impugned assessment order, it is seen that the assessing authority referred the averments made in the show cause notice and thereafter, it has proceeded to refer the deviation proposal (D3) given by the first respondent and proceeded to assess the petitioner and also levy penalty. Even in the D3 proposal, the second respondent while rejecting has directed the assessing officer to pass final orders based on the findings given in the rejection order. Therefore, if the assessing officer proposes to rely upon the findings recorded by the second respondent in the D3 proposal then, such material should have been made available to the petitioner prior to finalising the assessment and providing an opportunity to rebut the same. The same has not been furnished to the petitioner except for referring to such order in the impugned order of revision of assessment. Therefore, there is a total violation of principles of natural justice in these cases. That apart, no opportunity of personal hearing was afforded to the petitioner.
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> 9.For all the above reasons, the impugned revision of assessments are liable to be interfered with by this Court. Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the

matter is remanded back to the first respondent for fresh consideration. The second respondent is directed to furnish a copy of the deviation proposal to the petitioner and thereafter, the petitioner is entitled to submit his further explanation/objection on the said proposal to the first respondent and on receipt of the same, the first respondent shall afford an opportunity of personal hearing to the petitioner and pass order on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

5. The above referred decision could be squarely made applicable to these Writ Petitions as well. In the instant case also, the Assessing Officer has abdicated her statutory duty and was solely guided by the order passed by the second respondent.

6. In the light of the above, the Writ Petitions are allowed and the impugned order of assessments are set aside and the matter is remanded to the first respondent for fresh consideration, who shall furnish to the petitioner, a copy of the deviation proposal, given by the first respondent to the second respondent, the copy of the order passed by the second respondent, and afford an opportunity to the petitioner to submit their objections. After that, a personal hearing should be afforded to the authorized representative of the petitioner company and thereafter, the first respondent shall proceed to decide the matter, bearing in mind the duty which are enshrined with the Assessing Officer, as pointed out by the Hon'ble Division Bench.

7. In the result, the Writ Petitions are allowed. No costs. Consequently, M.P.Nos.1 of 2015 are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1 The Assistant Commissioner [CT]
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2 The Deputy Commissioner[CT],
Zone VIII, PAPJM Building, Greams Road,
Chennai-6

+ 6 ccS to Mr.M.Desingu, Advocate SR NO 33204, 33203, 33202, 33201, 33200, 33199

+ 1 CC to the Spl. Government Pleader [T], sr 33535

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