IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19701 of 2016 &

WMP Nos.17047 & 17048 of 2016

1 M/s.Yoga Agency [PETITIONER]
Rep by its Proprietor Mr.S.M.Jagannathan
Ponneri 0 602 204.

Vs

1 The Assistant Commissioner(CT)
Ponneri Assessment Circle
No.21 Cutchery Road
Ponneri.

2 The Joint Commissioner(CT)
Enforcement-II
PAPJM Buildings Greams Road
Chennai-600 006

3 The Deputy Commissioner(CT)
Enforcement Zone-III
PAPJM Buildings Greams Road
Chennai-600 006.

[RESPONDENTS]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Prohibition to prohibit the first respondent from proceeding with the re-assessment pursuant to the notice initiated for revision of assessments as directed by the second respondent in VSI/3/14/2015-16/Gr-V dated 17/06/2015 in the VAT audit report.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mr.V.Sundareswaran, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned counsel appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, this writ petition is taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TN VAT Act), has filed this Writ Petition, seeking for issuance of a writ of prohibition to prohibit the first respondent/Assessing Officer from proceeding with re-assessment, pursuant to the notice issued for revision of assessments.

3.The learned counsel for the petitioner submitted that though the petitioner would have no apprehension of attending the personal hearing before the first respondent, but has got a serious doubt as to whether the first respondent would independently look into the matter, since the notice which has been issued by the first respondent dated 20.04.2016, states that the petitioner's objections were sent to the Deputy Commissioner (CT), Zone III, for deviation against the Enforcement Proposal dated 17.6.2015 and the Deputy Commissioner (CT), Zone III has not accepted the proposal and instructed to implement the proposal. Therefore, the petitioner apprehends that the first respondent/Assessing Officer will not independently apply his mind and would straight away confirm the D3 proposal.

4.On a perusal of the notice dated 20.04.2016, this Court is of the view that the apprehension of the petitioner is reasonable, since already the Assessing Officer has pre-decided the matter. The manner in which the Assessing Officer has to function has been pointed 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].

5. 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."

6. 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.

7.In the light of the above referred decision, the first respondent being the Assessing Officer has to independently apply his mind and afford reasonable opportunity to the petitioner, direct him to produce the Books of Accounts, verify the details and thereafter complete the assessment. The first respondent should not be solely guided by what the Deputy Commercial(CT), Zone III has stated in his order. With the above observation, the matter is remanded to the first respondent, who shall act independently and after affording an opportunity of personal hearing to the petitioner. The above direction be complied within by the first respondent, within a period of three weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Rpa
To
1 The Assistant Commissioner(CT)
Ponneri Assessment Circle
No.21 Cutchery Road, Ponneri.

2 The Joint Commissioner(CT)
Enforcement-II
PAPJM Buildings Greams Road
Chennai-600 006

3 The Deputy Commissioner(CT)
Enforcement Zone-III
PAPJM Buildings Greams Road
Chennai-600 006.

1 cc to Special Government Pleader(Taxes), sr.31505
1 cc to Mr.V.Sundareswaran, Advocate, sr.31777

W.P.No.19701 of 2016

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kra 23.06.2016