IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.8.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26691 of 2016 & WMP.No.22915 of 2016

Tvl.Bata India Limited, rep.by
its Manager Mr.Alok Kumar Das ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Annasalai Assessment Circle,PAPJM Buildings Annexe
No.1,Greams Road, Chennai-6

2.The Commercial Tax Officer,
Group II, Enforcement (East),
Greams Road, Chennai-6. ...Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the case from the file of the first respondent herein, quash the impugned order of the first respondent in CST 33848/2013-14 dated 27.6.2016 (served on 1.7.2016) and direct the first respondent to pass an order of assessment based on the returns and Form WW filed by the petitioner by independently applying his mind and without the influence of the enforcement proceedings.

For Petitioner : Mrs.Lakshmi Sriram
For Respondents : Mr.S.Manohar Sundaram, AGP(T)

ORDER

Mr.S.Manohar Sundaram, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

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2. The petitioner is a dealer registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act). In this writ petition, the petitioner challenges the order of assessment for the year 2013-14 under the CST Act.

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3. The primary ground, on which, the impugned order has been challenged, is that the impugned order is devoid of any reasons and it is passed on presumptions and assumptions without calling for the reocrds from the petitioner and solely based upon the report of the officials of the Enforcement Wing.

4. A VAT audit was conducted by the officials of the Enforcement Wing in the place of business of the petitioner and a statement was obtained from the officer of the petitioner company on 21.1.2014, in which, it appears that the Enforcement Wing had directed the officer concerned to record a statement that they effected inter-state stock transfer for Rs.589,15,53,759/- for the year 2013-14 i.e upto December 2014 and this is not related to the turnover as per the revised returns filed for the year 2013-14.

5. Therefore, the officials of the Enforcement Wing appears to have given a report that inter-state stock transfer amount reported in the annual return in Form WW for the year 2013-14 is not related and does not tally with the revised turnover furnished at the time of VAT audit. This report of the officials of the Enforcement Wing led to the issuance of notice by the respondent dated 28.11.2014 proposing to revise the assessment.

6. The petitioner submitted their objections, which, in my view, appear to be very detailed objections, in which, they specifically stated that the report of the officials of the Enforcement Wing may not be relied upon and certain particulars were also furnished. The respondent, after taking into consideration of the objections filed by the petitioner, passed the impugned order.

7. On a perusal of the impugned order, it is evidently clear that the first paragraph of the order speaks about the VAT audit, which was conducted by the officials of the Enforcement Wing. The second paragraph deals with the reason for issuing the notice and the third paragraph is a verbatim repetition of the petitioner's objections. The fourth paragraph is in the nature of a tabulated statement. After referring to the relevant months, the e-returns filed, Form WW submitted and Form F declarations filed, it has been stated that the stock transfer valued upto December 2013 deposed to the Enforcement Wing on 7.2.2014 is Rs.5,89,15,53,759/-.

8. After mentioning the above details in the tabulated format, all that the first respondent has stated is that the statement proves beyond doubt that the dealers have not maintained correct and complete accounts. The manner, in which, the first respondent finalized the assessment, is a clear abdication of the statutory duties. The allegation against the

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petitioner was based on a VAT audit conducted by the officials of the Enforcement Wing, in which, a statement has been recorded and in that statement, the figures pertaining to stock transfer have been obtained. The petitioner specifically disputed that statement. Therefore, there was a statutory duty on the part of the first respondent to assess as to whether the petitioner's explanation sought to be given to the pre-revision notice was justified or not.

9. The first respondent cannot be a mere mouthpiece of the Enforcement Wing. At best, the report of the officials of the Enforcement Wing can be a starting point for issuing a notice and after the dealer files objections, it is incumbent on the part of the Assessing Officer to examine the objections in letter and spirit, call for records and specify as to whether there is any escapement of turnover or there are any sales suppression or variation in stock transfer, etc. However, such exercise was not done by the first respondent. This itself is a sufficient ground to remit the matter for fresh consideration.

10. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, verify all the records and thereafter redo the assessment in accordance with law without solely being guided by the statement recorded from the officer of the petitioner company by the officials of the Enforcement Wing. No costs. Consequently, the above WMP is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

सत्यमेव जयते

To
1.The Assistant Commissioner (CT),
Annasalai Assessment Circle,PAPJM Buildings Annexe
NO.1 Greams Road, Chennai-6.

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2.The Commercial Tax Officer, Group II, Enforcement (East),
Greams Road, Chennai-6.
+1 cc to Special Government Pleader Taxes sr.43592
+1 cc to Mrs.Lakshmi sriram Advocate sr.43310

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