IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.26730 to 26734 and
26916 to 26925 of 2016 & WMP Nos.22950 to 22954/16
WMP.Nos.23142 to 23151/16

M/s.Kapil Agencies
Rep by its Proprietor ...Petitioner in WP.Nos.26730 to 26734/16

1 M/s.Steel Exchange House (Now Defunct) Rep by Nirmal Kumar Son & LRs Late Moolchand Maheswari Proprietor of M/s. Steel Exchange House No.18 Crescent Park St T.Nagar Chennai 17 ...Petitioner in WP.No. 26916 to 26925/2016

Vs

1 The Assistant Commissioner(CT)
Broadway Assessment circle
Earlier Harbour - III Assessment Circle
No. 199 Thambu Chetty Street
Chennai-1

2 The Deputy Commercial Tax Officer
(Now Upgraded as Commercial Tax Officer)
Enforcement (Central) Group No.1
C.T. Buildings, Greams Road, Chennai-6

3 The Assistant Commissioner(CT)
(Now Upgraded as Deputy Commissioner(CT))
Zone I, C.T.Buildings,
Greams Road, Chennai- 600 006.

4 The Assistant Commissioner(CT)
(Now Upgraded as Deputy Commissioner(CT))
Enforcement-I, C.T. Buildings,
Greams Road, Chennai-600 006.

5 The Deputy Commissioner (CT) (FAC)
Now Upgraded as Joint Commissioner (CT)
Enforcement -I, C.T.Buildings
Greams Road, Chennai-600 006.

6 The Joint Commissioner(CT)
Chennai North Division
C.T. Buildings, Greams Road
Chennai-600 006

...Respondents in WP.NOs.26730 to 26734/16 and WP.Nos.26916 to 26925/16

Prayer in WP.No.26730 to 26734/16:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the records of the first respondent in TNGST/0040307/1999-2000, 2000-2001,2001-2002,2002-2003, and 2003-2004 respectively and to quash the impugned order dated 14.06.2016, as the same is passed contrary to the provisions of the TNGST Act and also has been passed based on the instructions issued by the second, fourth, fifth and sixth respondents and so without jurisdiction and also against the law laid down by the Honourable Supreme Court and the Madras High Court in number of decisions that declared goods cannot to subjected to tax in the second and subsequent hands and therefore without authority of law.

Prayer in WP.No.26916 to 26925 of 2016:Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiori to call for the records of the 1st respondent in his impugned proceedings dt 15.6.2015 passed in CST/2791/1999-2000,2000-2001, 2001-2002, 2002-2003, 2003-2004, and TNGST/0040072/1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004, respectively and quash the same as the same has been passed issued based on the instructions issued by the 2nd 4th and 5th respondents and so without jurisdiction and also against the law laid down by the Honourable Supreme Court and the Madras High Court in number of decisions that declared goods cannot to subjected to tax in the second and subsequent hands and therefore without authority of law

For Petitioners (in all W.Ps.) : Mr.C.Natarajan Senior .Counsel,

asstd by Mr.P.Rajkumar

For Respondents (in all W.Ps.) : Mr.S.Kanmani Annamalai Addl. Government Pleader

Asstd by Mr.K.Venkatesh, Govt. Advocate

C O M M O N O R D E R

Heard Mr.C.Natarajan, learned Senior Counsel, assisted by Mr.P.Rajkumar, learned counsel for the petitioners and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, assisted by Mr.K.Venkatesh, learned Government Advocate, appearing on behalf of the respondents. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2.The petitioner in W.P.Nos. 26730 to 26734 of 2016, is a registered dealer under the erstwhile Tamil Nadu General Sales Tax Act, 1956 [TNGST Act], presently Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and the challenge is the orders of assessment for the years 1999-2000 to 2003-2004.

3.The petitioner is a dealer in Iron and Steel, they have been carrying on business for several decades, their returns have been assessed periodically and they have been granted second sale exemption for various assessment years, except for the five assessment years, which are the subject matter of these Writ Petitions.

4.The place of business of the petitioner was inspected by the Enforcement Wing Officials between 30.07.2003 and 14.08.2003. A report was given by the officials of the Enforcement Wing on 31.03.2004 to the first respondent which is referred to as a D-3 proposal, when the provisions of TNGST Act were in vogue. That resulted in issuance of a show cause notice dated 31.05.2004 for the assessment year 1999-2000. Similar notices were issued for the other assessment years as well.

5.The sum and substance of the allegations against the petitioner Agency was that they have failed to prove the movement of goods, with the details of freight paid, loading and unloading charges paid, way bill number with date, name and address of the transporters, etc. Further they have not produced any proof for the turnover for which they have claimed exemption and they refused to sign the statement including the stock reconciliation statement.

6.Referring to Section 10 of the TNGST Act, it was stated that the burden of proving that any transaction or any turnover of a dealer is not liable to tax lies on the dealer who is claiming exemption. The names of the the sister concerns of the petitioner as well as the Transport Contractors were referred to and ultimately, the first respondent stated that the petitioners have knowingly produced false Bills with a view to support or make the claim that the transaction of sale is not liable to be taxed. Accordingly, the respondent proposed to reject the second sale exemption, claimed by the petitioner and revised the assessment for the relevant years.

7.The petitioner submitted interim objections on 22.06.2004 for three assessment years, viz., 1999-2000, 2000-2001 & 2001-2002, wherein they requested for furnishing copies of statement of records as well as to cross examine the other end dealers, who are said to have given statements against them. In the meantime, the petitioner also obtained a declaration from the Steel Authority of India Limited (SAIL), one of the dealers from whom the petitioner had purchased Iron and Steel, who by their declaration dated 29.07.2004, certified that during financial year 2000-2001, they have sold Iron & Steel to the petitioner and have duly included the said turnover in their returns before their Assessing Officer and accordingly considered for Assessment. For the financial years 1999-2000 to 2001-2002, on receipt of those particulars, the Officer, who was then functioning as Commercial Tax Officer, Harbour-III Assessment Circle, Chennai, submitted a Deviation proposal dated 18.10.2004, to the Assistant Commissioner (CT), Zone-I, Chennai-6, stating that the purchase details obtained from the petitioner show that majority of the purchases effected by the petitioner was from M/s Steel Authority of India Ltd., Chennai, a Public Sector Undertaking. Therefore, the first respondent recommended that the purchases effected by the petitioner from M/s Tulsyan Udyod Limited and M/s Tulsyan NEC Ltd, alone may be rejected for the reasons stated by the Enforcement Wing and requested permission to deviate the D3 proposals dated 31.03.2004. However, the second respondent by an order dated 22.02.2005, stated that the deviation proposal is not accepted. It is thereafter, a proposal was given by the first respondent to the Assistant Commissioner (CT), Zone-I dated 28.03.2005, stating that no reasons have been given by the Deputy Commissioner for rejecting the deviation to the D3 proposal and therefore requested the deviation proposal to be considered.

The Assistant Commissioner in turn addressed the first respondent by letter dated 11.10.2007, stating that the deviation proposal has been rejected by the Joint Commissioner (CT), by an order dated 21.09.2007 and requested the first respondent to implement the D3 proposal dated 31.03.2004. It is thereafter, a notice was issued by the first respondent dated 29.09.2008, giving a final opportunity to the petitioner to file their objections. In the said notice, it was stated that no third party statement is relied upon or any records seized from any other agency has been used to make out the proposal. Such observation was in response to the petitioner's request for cross examination of the persons, who are said to have given statements against the petitioner.

8.Thereafter, two separate notices were issued on 10.10.2008, for the years 2002-2003 and 2003-2004, calling upon the petitioner to give objections. Accordingly, the petitioner had submitted objections dated 09.02.2009 and enclosed voluminous records to substantiate their claims. In spite of the receipt of the objections and the enclosures, the first respondent by an order dated 18.05.2009, finalised the assessments for the years 2002-2003 and 2003-2004. Those orders were put to challenge by the petitioner by way of Writ Petitions, the orders were set aside and the matter was remanded for fresh consideration. During the pendency of the Writ Petitions, since the petitioner was able to obtain several declarations from SAIL, covering all the transactions done by the petitioner, the Writ Petitions were allowed by an order dated 23.06.2009 and the petitioner was granted four weeks time to file their objections, which they have complied with by submitted their objections on 10.07.2009.

9.M/s SAIL addressed a letter to the petitioner on 08.07.2009, confirming that they have paid taxes for the relevant assessment years on the transactions effected with the petitioner. One more objection was submitted by the petitioner on 02.08.2009, for the assessment year 2002-2003, i.e. after the disposal of the Writ Petition. While so, the first respondent sent a communication dated 10.07.2009, to the Joint Commissioner (CT), Chennai North Division, stating that substantial transactions have been done by the petitioner with SAIL and therefore, the deviation proposal may be accepted, by bringing to its notice that in respect of the petitioner's sister concern M/s Steel Exchange House, the transactions effected from SAIL were accepted. That was followed by another communication by the Deputy Commissioner (CT), Zone-I, dated 20.08.2009, to the 6th respondent/ Joint Commissioner (CT), Chennai (North) Division, with a request to re-open the petitioner's case and to examine the possibility of considering the second sale exemption, which was already allowed in so far as it relates to the purchase from SAIL, whose existence or bona fides of the transaction cannot be suspected. In the meantime, notices for personal hearing were issued and the petitioner also submitted objections dated 14.10.2009, for those assessment years. Whileso, the first respondent was informed that the Joint Commissioner has rejected the deviation proposal. Thus, ultimately, the orders of assessment came to be passed and the proposals in the show cause notices were confirmed. Challenging those orders of assessment, the petitioner is before this Court.

10.Mr.C.Natarajan, learned Senior Counsel assisted by Mr.P.Rajkumar, learned counsel for the petitioners, elaborately referred to the factual averments and pointed out that the impugned proceedings are totally unsustainable and have been passed by way of implementation of the D3 proposals given by the second respondent and there is no independent application of mind by the Assessing Officer.

11.By referring to the phrases used in the pre-revision notices, it is submitted that there is a clear direction to implement the D3 proposals, and that is what the Assessing Officer has done. The learned Senior Counsel also referred to the deviation proposals submitted by the first respondent on 18.10.2004 as well as on 28.03.2005 and those proposals were rejected by the second respondent/Joint Commissioner, without even referring to the contents of the proposal nor considering the effect of it. The learned counsel also pointed out that the third respondent had sent an Arbitration proposal on 20.08.2009, requesting the matter to be re-opened. Once again, the first respondent addressed the 6th respondent on 30.12.2011, for re-submission of the arbitration proposal and in spite of the same, the order of rejection came to be passed on 25.04.2012, with an instruction to the Assessing Officer to implement the D3 proposal. Therefore, it is submitted that the action of the respondent in merely implementing the D3 proposal amounts to clear abdication of the duties and responsibilities of an Assessing Officer and this is sufficient to hold that the impugned orders are wholly illegal.

12.Further, it is submitted that along with the objections given by the petitioner to the first respondent on 02.08.2009, the petitioner produced the copies of Unloading vouchers consisting of 175 pages; Freight Bills/unloading vouchers consisting of 335 pages; Copies of Invoices where the buyers directly transported to the goods consisting of 223 pages and Declarations from the local suppliers consisting of 170 pages. Annexure-II, M/s Sri Raja Transport, who were engaged for transporting goods from SAIL stockyard to the petitioner's godown and similar documents were produced for the assessment year 2003-2004. Thus, it is submitted that the materials placed by the petitioner before the first respondent were not considered and the first respondent solely proceeded to confirm the D-3 proposal, which he was directed to do. It is further submitted that the burden cast upon the petitioner under section 10 of the TNGST Act has been discharged and the burden has been re-shifted upon the first respondent to establish in the manner known to law that the petitioner is not entitled for second sale exemption and that having not been done, the impugned orders are liable to be set aside.

13. In support of his contentions, the learned Senior Counsel placed reliance on the following decisions:

(1) Orient Paper Mills Ltd., V. Union of India [(1969) 1 SCR 245]: [AIR 1969 SC 48]

(2) Orient Paper Mills Ltd., V. Union of India [(1970) 3 SCC 76]

(3) Indure Limited V. Commissioner of Sales Tax, Cuttack, Orissa & Ors.[(2006) 148 STC 61 (Ori)]

(4) R.Abdul Azeez V. State of Tamil Nadu & Ors. [80 STC 53]

(5) State of Tamil Nadu V. A.N.S.Guptha and Sons [(2011) 38 VST 45 (Mad.)

(6) Ashok Electro Diamonds & Ors Vs. The Joint Commercial Tax Officer, Tiruchirapalli & The Senior Superintendent of Post Officers, Tiruchi [(1971) 28 STC 221 (Mad.)

(7) Bikabhai Prabhudas Parekh and Company Vs The Commercial Tax Officer (Additional Circle), South Kanara, Mangalore.

(8) Munnalal Muralidhar V. Commissioner of Income Tax, U.P. [(1971) 79 ITR 540 (All.)]

(9) Food Corporation of India V. Provident Fund Commissioner and Ors [(1990) 1 SCC 68].

(10) S.Hastimal V. Commissioner of Income Tax, Madras [(1963) 49 ITR 273 (Mad)]

(11) Mehta Parikh and Co. Vs Commissioner of Income Tax, Bombay [(1956) 30 ITR 181 (SC)]

(12) Sujana Universal Industries Limited V. DCTO, Valluvarkottam Assessment Circle [(2003) 23 VST 118 (Mad)]

(13) DCCT, Coimbatore Division Coimbatore V. Sivakumar and Co. [(1980) 45 STC 436 (Mad)]

With the above submissions, the learned Senior Counsel sought for setting aside the impugned orders and to remand the matter to the Assessing Officer for a thorough consideration of all the documents and redo the assessments.

14.Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents reiterated the factual details which lead to the issuance of the pre-revision notices, emphasised upon the allegations against the petitioner and elaborate reference was made to the averments set out in the show cause notices. Further, by referring to Section 10 of the TNGST Act, it is submitted that the petitioner is entitled to second sale exemption, if he satisfies the four mandatory conditions and production of invoices alone will not entitle the dealer for exemption, as movement of goods have to be proved. The petitioner having not discharged the burden cast upon them, the respondents were justified in passing the impugned orders.

15.It is further submitted that the issue raised by the Inspecting Officer is to have a verification of the genuineness of the physical particulars of the said purchase and the petitioner was called upon to produce documents and they have failed to produce documents which clearly indicates that the said document (Invoice) is bogus, which cannot be relied on to prove the genuineness of the transactions. It is further submitted that on verification of the Books of Accounts, the quantum correlation alone could be verified and unless and until the purchases are supported by physical movement, the petitioner is not entitled for exemption. Further, it is submitted that it may not be relevant as to from which dealer the petitioner have purchased the goods and merely because the petitioner had transaction with SAIL, that by itself will not automatically entitle the petitioner for second sale exemption, as the petitioner is bound to prove the movement of goods.

16.Heard the learned counsel for the parties and perused the materials placed on record.

17.Before the Court proceeds to consider the factual matrix, it would be necessary to state as to what are duties and responsibilities enjoined upon the Assessing Officer. There can be no quarrel to the proposition that the Assessing Officer is an independent statutory authority, exercising statutory powers and cannot be bound over by the directions issued by his superior authorities. In Orient Paper Mills Ltd., V. Union of India [(1969) 1 SCR 245] (supra), the Hon'ble Supreme Court after referring to the other decisions, pointed out that the Commercial Officer while assessing certain transactions should not have solicited instructions from the Assistant Commissioner, nor he should have acted on the basis of those instructions. It was further held that the instructions given by the Assistant Commissioner had vitiated the entire proceedings as "the procedure adopted was, to say the least, unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department.

18.In the case of Orient Paper Mills Ltd., V. Union of India [(1970) 3 SCC 76] (supra), the Hon'ble Supreme Court held that in respect of various taxation laws that the assessing authorities exercise quasi judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector, it cannot be said to be their independent judgment in any sense of the word. An Appeal then to the Collector becomes an empty formality.

19.In the case of Indure Limited (supra), after taking note of the earlier decisions including the decision in the case of Orient Paper Mills Ltd., wherein the view expressed by Professor Wade in Administrative Law, Eighth Edition, 326, was referred to, which reads as follows:

> " Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void."

20.In the case of R.Abdul Azeez, (supra), an interesting issue arose before the Hon'ble Division Bench of this Court as to whether the Joint Commercial Tax Officer who passed the order of best judgment assessment on the assessee and imposed penalty for suppression of sale, which was set aside in Appeal could be proceeded with by initiating disciplinary action against the Officer. While answering the question in the negative, the Hon'ble Division Bench pointed out that the appellant there was exercising judicial functions conferred on him under the provisions of TNGST Act and any order of assessment is subject to appeal and further appeal and also revision. In the light of the hierarchy of remedies available the appellant/assessing officer cannot be proceeded against by way of disciplinary action.

21.The above decisions give a fair indication as to how the assessing officer should function and what are his powers and it is worthwhile to reiterate that the assessing officer exercises quasi judicial function and he has a duty to act judicially and in an independent manner and he cannot be controlled by the directions issued by his superior authorities and if done so, the decision is ultra vires and void.

22.Having noted the powers of the Assessing Authority, it would be necessary to consider as to what is the duty cast upon the Assessing Officer. In the case of A.N.S.Guptha and Sons, the Hon'ble Division Bench of this Court took note of sections 54, 54A and 55 of the TNGST Act and pointed out that those provisions would clearly indicate that the authority is vested with all powers including invoking the provisions of CPC in summoning the witnesses; compelling production of documents and also examining and cross-examining the parties in this regard by the assessee and above all these, the assessing officer if vested with a special power to collect or get information under section 54A of the Act and these sections are clearly intended for utilising for the benefit of both the assessee and the Department to gather evidence or information from the third parties.

23.In Ashok Electro Diamonds & ors (supra), the Writ Court issued a direction to the Assessing Officer to summon the postmaster concerned to furnish information regarding the articles sent by the assesses and sent back to the assessees in the course of their business. This direction was issued by taking note of the power under section 54 of the TNGST Act, which gives power to summon the witness and call upon the person to produce documents. Thus, the powers conferred on the Assessing Officer are wide enough to conduct a comprehensive enquiry into the matter.

24.Having noted the powers exercisable by the Assessing Officer under the provisions of the Act, it has to be seen as to how the assessee has to be dealt with by the Assessing Officer. In Munnalal Muralidhar, a case arising under the Income Tax Act, 1922, the Hon'ble Division Bench of Allahabad High Court, pointed out that if the Income Tax Officer is not satisfied as to the return made by the assessee under section 22 of the Act, he (Income-Tax Officer) shall require the assessee to attend to his office in person or to produce or cause to be there produced, such evidence on which the assessee might rely in support of the return and it is implicit , the Assessing Officer should give the assessee reasonable time and an opportunity to produce such evidence and should not act with undue haste.

25.If the impugned assessment orders are tested on the anvil of decisions referred above, the only conclusion that can be arrived at is that the impugned orders are illegal and unjust. The impugned orders are arbitrary exercise of power and clear abdication of the duties cast upon the Assessing Officer, who has in fact acted as a mouthpiece of his superior authority by implementing the Enforcement proposal called as the D3 proposal. What is heartening to note is the two Assessing Officers, who were occupying the Office of the first respondent at the relevant point of time, had the vision to inform their superior authorities that the D3 proposal requires to be deviated.

26.On a perusal of such deviation proposal dated 18.10.2004, 28.03.2005 and 30.12.2009, and the proposal which emanated from the third respondent dated 20.08.2009, shows that the officers of the Commercial Tax Department have applied their mind to the issue involved in the petitioner's case, but, what is disheartening to note is that the superior authority namely the second respondent, in a mechanical manner, rejected it by a non-speaking order, coupled with a positive direction to the Assessing Officer to implement the D3 proposal. Therefore, this Court is of the view that the Assessing Officer cannot be solely blamed, because considering the hierarchy in the Commercial Tax Department. It is seldom seen that the Assessing Officer refuses to implement the D3 proposal as they may earn the wrath of their superiors. Interestingly, in the instant case, while giving their views on the D3 proposal, the Officers have recorded their prima facie view as to why they seek for a permission to deviate. This could have been considered by the second respondent or the Joint Commissioner/6th respondent in a proper perspective and the Assessing Officer could have been informed as to why his observation is not acceptable. Rather the second respondent and the Joint Commissioner, acted in a most arbitrary manner in stating that the deviation proposal is rejected and the assessing officer should implement the D3 proposal. Thus, it is a classical case where the assessing officer has been compelled to abdicate his statutory duty, eventually, the illegal assessment orders have been passed.

27.The learned Senior Counsel appearing for the petitioner referred to the decision of the Hon'ble Division Bench of this Court in the case of S.HASTIMAL(supra), to support the proposition that the assessee cannot be called upon to explain, not merely the origin and source of his capital contribution, but, the origin of origin and the source of source as well. Further, it is pointed out the fact by referring to the decision of the Hon'ble Division Bench of this Court in the case of SUJANA UNIVERSAL INDUSTRIES LIMITED (supra) that the initial burden under section 10 of the TNGST Act is on the assessee, which would be discharged by production of sale bill, and other information, such as registration certificate number under TNGST Act etc. of the selling dealer and thereafter, it is for the Department to verify the accounts of the selling dealers to find out the correctness.

28.Referring to the decision of the Hon'ble Division Bench of this Court in the case of SIVAKUMAR AND CO., (supra), it is submitted that the assessee have to produce relevant bills, vouchers and he has to discharge the burden cast upon him under section 10 of the TNGST Act.

29.As noticed above, there has been no application of mind to the objections given by the petitioner nor to the documents produced by the petitioner which are voluminous, mechanically the assessments have been completed. As stated above, because of the fact that the super officers viz. the second and sixth respondents had directed the Assessing Officer to implement the D3 proposal, the Assessing Officer failed to take into consideration the documents produced by the petitioner nor has given any cogent reasons as to why the petitioner's transactions are to be disbelieved.

30.One more factor which has weighed in the minds of the Court is with regard to the manner in which the petitioner's returns have been processed from 1987-88. From the Flow Chart, which has been produced, it is seen that from 1987-88, the petitioner's Billing have been accepted and the second sale exemptions have been allowed and the gap is between 1999-2000 and 2003-2004, which are the subject matter of these Writ Petitions. After 2004-2005 onwards, the turnovers have been accepted and second sale exemption has been granted upto 2013-2014, that too by the very same Assessing Officer, who passed the impugned orders.

31.Therefore, if during the relevant period, which is the subject mater in these Writ Petitions, there were some errors committed by the petitioner, then the same has to be thoroughly verified, bearing in mind the duties of the Assessing Officer, as spelt out in the aforementioned decisions. All the above reasons are sufficient to hold that the impugned assessments are illegal and erroneous.

32.In so far as W.P.Nos. 26916 to 26925 of 2016, the petitioner in these case are M/s Steel Exchange House, (now defunct), represented by Mr. Nirmal Kumar, son and legal heir of late Moolchand Maheswari. The difference in these cases when compared to the case relating to M/s Kapil Agencies, are only two fold. Firstly, in these cases, the first respondent Assessing Officer sent a deviation proposal with regard to the purchases effected by M/s Steel Exchange House from M/s Steal Authority of India and the devision proposal was accepted by the Assistant Commissioner (CT), Enforcement (Central) and second sale exemption was allowed in so far as it relates to the purchases from SAIL. In the impugned assessment orders, the purchases effected from other companies i.e. other than SAIL have been denied the second sale exemptions. However, the Assessing Officer did not go into the merits of the assessment, but was solely carried away by the dispute with regard to the constitution of the petitioner and devoted much attention to the said contention and by over ruling the objections raised by the petitioner, confirmed the proposal in the pre-revision notice. Thus, the impugned orders are flawed for reasons that the merit of the assessments were not gone into by the Assessing Officer. So far as the constitution of the petitioner-M/s Steel Exchange House is concerned, various factual issues have been raised by the petitioner in the affidavits filed in support of the Writ Petitions which cannot be adjudicated in a Writ proceedings.

33.In the considered view of this Court, this issue should also be re-considered by the Assessing Officer, moreso, when this Court in W.P.Nos.20118 to 20123 of 2011, had set aside the earlier orders passed and directed notices to be served on the legal heirs and thereafter to follow the procedure under law. Though the respondent in the impugned orders referred to the contentions raised by the dealer, the conclusion arrived at by the Assessing Officer does not spell out as to how he is not convinced of the said contentions. Therefore, the issue relating to the constitution of the erstwhile proprietary concern also requires to be considered afresh.

34.In the result, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the first respondent for fresh consideration. The first respondent shall afford an opportunity of personal hearing to the petitioners, peruse all the documents and call for further particulars if needed and after affording an opportunity to the petitioners, redo the assessments in accordance with law. It is made clear that the first respondent shall independently, consider the objections, without being in any manner influenced by the D3 proposals submitted by the second respondent nor rejection of the arbitration claim by the sixth respondent. Likewise the first respondent shall consider all the factual details placed by the petitioner relating to the petitioner in

W.P.Nos.29916 to 26925 of 2015, the constitution of the firm, etc., including the merits of the claims made by the petitioners. No costs. Consequently,connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

1 The Assistant Commissioner(CT)
Broadway Assessment circle
Earlier Harbour - III Assessment Circle
No. 199 Thambu Chetty Street
Chennai-1

2 The Deputy Commercial Tax Officer
(Now Upgraded as Commercial Tax Officer)
Enforcement (Central) Group No.1
C.T. Buildings, Greams Road, Chennai-6

3 The Assistant Commissioner(CT)
(Now Upgraded as Deputy Commissioner(CT))
Zone I, C.T.Buildings,
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4 The Assistant Commissioner(CT)
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5 The Deputy Commissioner (CT) (FAC)
Now Upgraded as Joint Commissioner (CT)
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6 The Joint Commissioner(CT)
Chennai North Division
C.T. Buildings, Greams Road
Chennai-600 006

+2 ccs to Special Government pleader sr 64092 & 64093

+2 ccs to Mr.P.Rajkumar Advocate sr 63855 & 63856

W.P.Nos.26730 to 26734 and
26916 to 26925 of 2016

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