IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.28573 & 28574 of 2016 &
WMP Nos.24654 & 24655 of 2016

M/s Achyuta Engineering Works
rep. by its Proprietrix
K.Rathinakumari .. Petitioner in both W.Ps.

..Vs..

The Commercial Tax Officer
Thiruvottiyur Assessment Circle
NO.791, 1st Floor, T.H.Road
Chennai 600 019.
.. Respondent in both W.Ps.

Prayer in W.P.No.28573 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus to direct the respondent to furnish the records in support of the alleged purchases and sales effected through containers, and issue summons to the 3rd parties who had sent or purchased the goods through containers, and issue summons to the 3rd parties who had sent or purchased the good through containers, and for permitting the petitioner to conduct the cross examination of the 3rd parties as per the request made by the petitioner vide their representation dated 27.06.2016 and conduct a detailed enquiry, before proceeding with the Revision Notice in TIN No.33321101787/2013-2014 dated 18.03.2016 and thereafter, permit the petitioner to file their final objections and grant a personal hearing.

Prayer in W.P.No.28574 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus to direct the respondent to furnish the records in support of the alleged purchases and sales effected and issue summons to the 3rd parties, who had purchased the goods, for producing the records and for permitting the petitioner to conduct the cross examination of the 3rd Parties and conduct a detailed enquiry, before proceeding with the Revision Notice in TIN

No.33321101787/2011-2012 dated 18.03.2016 and thereafter, permit the petitioner to file their final objections and grant a personal hearing.

For Petitioner : Mr.K.Soundararajan
in both WPs
For Respondent : Mr.S.Kanmani Annamalai
in both WPs Addl.Government Pleader

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O R D E R

Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of the respondent. By consent, the Writ Petitions are taken up for final disposal. Mrs.G.Revathy, Assessing Officer was directed to be present in Court for assisting the Court. Accordingly, the Assessing Officer is present in Court along with necessary instructions.

2(i) The petitioner who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act], and Central Sales Tax Act, 1956, has come forward with W.P.No.28573 of 2016, for issuance of directions to the respondent to furnish the records in support of the alleged purchases and sales effected through containers, and for permitting the petitioner to conduct the cross examination of the 3rd parties as per the request made by the petitioner vide their representation dated 27.06.2016 and conduct a detailed enquiry, before proceeding with the Revision Notices in TIN Nos.33321101787/2013-2014 & 2011 & 2012 dated 18.03.2016 and thereafter, permit the petitioner to file their final objections and grant a personal hearing.

(ii) The petitioner has also filed W.P.No.28574 of 2016, for directing the respondent to furnish the records in support of the alleged purchases and sales effected and issue summons to the 3rd parties, who had purchased the goods, for producing the records and for permitting the petitioner to conduct the cross examination of the 3rd Parties and conduct a detailed enquiry, before proceeding with the Revision Notice in TIN No.33321101787/2011-2012 dated 18.03.2016 and thereafter, permit the petitioner to file their final objections and grant a personal hearing.

3.When the case was heard for admission on 17.08.2016, on going through the pre-revision notices, this Court found that the authority has virtually pre-decided the matter and prima facie the Court was of the opinion that the said notices have virtually foreclosed the petitioner's right to give any objection, since a decision has already been taken. Therefore, to ascertain full facts, this Court directed the Assessing Authority to be present in Court. Accordingly, Mrs.G.Revathy, Assessing Authority is present and she has made the submissions.

4.It is seen that the pre-revision notices are the result of surprise inspections conducted in the place of business of the petitioner on 06.09.2014, 11.09.2014 and 22.09.2014, by the Enforcement Wing Officials. Though inspections were conducted during 2014, the Assessing Officer would state that she has received the copy of the report from the Assistant Commissioner (CT), Central Enforcement Wing, Zone-1, only in January, 2010, after which the pre-revision notices have been issued.

5.The learned Additional Government Pleader has produced the Assessment File maintained by the respondent, from which it is seen that the issues referred to in the pre-revision notices, are verbatim repetition of the report of the Enforcement Wing. Thus, it appears that the respondent has not taken a decision in the matter, but, has verbatim extracted the observations of the Enforcement Wing Officials.

6.This Court pointed out to the Assessing Officer that she is a Statutory Authority, who has to complete the Assessment in accordance with law and not be solely guided by the report of the Enforcement Wing and at best such report should be treated as an information and a cause of action for issuing a show cause notice. Once the dealer files their objections, the Assessing Authority is expected to independently apply his/her mind to the factual details and the legal positions pointed out by the dealer and then take a decision in accordance with law. In fact, even before the Enforcement Wing, the petitioner denied the entire transactions and stated that without giving any evidence or documents, as to on what basis, the Enforcement Wing Officials came to the conclusion that the petitioner had effected several business transactions by fraudulently using their name and style of business, TIN Number and CST Number, they were unable to submit any effective objections.

7.In the pre-revision notice in paragraph No.5, the Assessing Officer has extracted the statements given by the dealer before the Enforcement Wing, clearly stating that they have to be furnished with copies of Invoices, Delivery Challan, etc., to know the date of transaction, Invoice Number, Value and name and address of the seller who made the alleged sales and the address of the transporters of such transactions. Further, the dealer pointed out that it would be against the principles of natural justice to expect them to submit explanation for the alleged transactions in the absence of correct and complete records. Further, the dealer has also requested the Department to take stringent efforts to detect the person who has made all those transactions by fraudulently using their name and style of business, TIN Number and CST Number to evade tax due to the Government. In fact, the Assessing Officer has also extracted the observations of the Enforcement Wing officials, where the Officials of the Enforcement Wing has recorded that they have not accepted the stand taken by the dealer.

8.Be that as it may, now the factual position has been clarified by the Assessing Officer herself and it is clear from the records that the Assessing Officer does not have any material evidence, except the report of the Officials of the Central Enforcement Wing, Zone-1. Therefore, even if the petitioner makes a request to the Assessing Officer to supply the documents, she is not in a position to supply the same, as those documents are not available with her, presumably, those documents were available with the Enforcement Wing Officials.

9.In the light of the above, the Writ Petitions are disposed of and the petitioner is directed to submit a representation to the respondent/Assessing Officer, clearly indicating the documents which they require. On receipt of the representation, the respondent/Assessing Officer, shall address the Assistant Commissioner (CT), Central Enforcement Wing-I, Chennai-6, inform about the directions issued by this Court and request for supply of all the documents sought for by the petitioner. After receiving those documents from the Central Enforcement Wing-I, copies there of shall be provided to the petitioner and thereafter, the petitioner is entitled to submit their objections and on receipt of the objections, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner and if the request for cross examination is made, such request should also be acceded to and thereafter, the Assessing Officer shall complete the assessment by independently applying her mind to all the issues that may be pointed out by the petitioner in their objections, after receiving the documents. The parties shall endeavour to complete the above directions within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Thiruvottiyur Assessment Circle
NO.791, 1st Floor, T.H.Road
Chennai 600 019.

+1 cc to Mr.K.Soundararajan Advocate sr 47098
+1 cc to the Special Government Pleader Taxes sr 47251

W.P.Nos.28573 & 28574 of 2016

aa26/09/2016