IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.31823 to 31830/2016 & WMP.Nos.27603 to 27609/2016

Viki Industries Pvt Ltd
rep.by Manager, Finance,
M.Penchalnaidu,
1, Krishna Street, Nungambakkam
Chennai 600 034. ..Petitioner in all the writ petitions

Versus

1.The Assistant Commissioner [CT]
Valluvarkottam Assessment Circle
No.10, Palaniappa Maligai
Greams Road, Chennai 600 006.

2.The Joint Commissioner [CT]-I
[Enforcement], Anna Pavazhavizha
Building, Greams Road,
Chennai 600 006. ..Respondents in all the writ petitions

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records on the files of the 1st respondent herein in TIN.No.33940702291/2007-08; TIN.No.33940702291/2008-09; TIN.No.33940702291/2009-10; TIN.No.33940702291/2010-11; TIN.No.33940702291/2011-12; TIN.No.33940702291/2012-13; TIN.No.33940702291/2013-14 and TIN.No.33940702291/2014-15 dated 12.08.2016, quashing the same, insofar as it relates to the assessment years 2007-2008 to 2014-2015, while directing the 1st respondent herein to proceed with the adjudication of the case of the petitioner for the assessment years 2007-2008 to 2014-2015 initiated by the 1st respondent herein in TIN.No.33940702291/2007-08 ; TIN.No.33940702291/2008-09 ; TIN.No.33940702291/2009-10 ; TIN.No.33940702291/2010-11 ; TIN.No.33940702291/2011-12 ; TIN.No.33940702291/2012-13 ; TIN.No.33940702291/2013-14 and TIN.No.33940702291/2014-15 dated 27.02.2015 in the light of the objections submitted by the petitioner in their letter dated 01.04.2015 without being influenced by the instructions or directions to be obtained or secured from the 2nd respondent who has no adjudicatory function.

For Petitioner in all the writ petitions : Mr.N.Sripraskash

For Respondents in all the writ petitions : Mr.K.Venkatesh, GA [Taxes]

COMMON ORDER

Heard Mr.N.Sripraskash, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate [Taxes] accepting notice on behalf of the respondents and with the consent on either side, the writ petitions are taken up for final disposal.

2 The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the intimation issued by the 1st respondent dated 12.08.2016 and further, to direct the 1st respondent to proceed with the adjudication for the assessment years 2007-08 to 2014-15 in the light of the objections submitted by the petitioner dated 01.04.2015.

3 The 1st respondent is the petitioner's Assessing Officer. For the Assessment Years 2007-2008 to 2014-2015, the 1st respondent issued pre-revision notices dated 27.02.2015 which was pursuant to an inspection conducted by the Enforcement Officers in the place of business of the petitioner on 21.01.2015 and 24.01.2015. In respect of the relevant Assessment Years, various issues were raised for consideration, which have been mentioned in the pre-revision notices. However, for the purpose of considering the relief sought for in these writ petitions, those details may not be very relevant. The petitioner has submitted his objections on 01.04.2015. Thus, in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006, the next step to be taken by the 1st respondent is to afford an opportunity of personal hearing to the petitioner and complete the issue after considering the documents filed by the petitioner and taking note of the stand raised in their objections. In fact, the petitioner was under a strong belief that they will be called upon to explain the matter. It is interesting to note that the 1st respondent appears to have been fully convinced by the stand taken by the petitioner in the reply to the pre-revision notices, which has prompted him to issue a deviation proposal to the 2nd respondent dated 12.03.2016 in RC.No.57/2016/A4. Along with the deviation proposal, apart from the other documents, the 1st respondent has enclosed a

decision of this Court in the case of Interfit Techno Products Limited Vs. The Principal Secretary/Commissioner of Commercial Taxes and another [WP.No.13901/2013 etc batch dated 26.11.2014. Since no action was initiated by the 1st respondent, the petitioner submitted a representation on 09.08.2016 stating that they have received notice on 18.07.2016 from the Income Tax Department regarding the issues and they are facing serious problem due to the pendancy of the assessment before the 1st respondent and requested the 1st respondent to finalise the proceedings after accepting their reply dated 01.04.2015. For this representation, the petitioner was visited with an intimation dated 12.08.2016 stating that the petitioner's request cannot be considered as of now since the deviation proposal has been sent by the 1st respondent to the 2nd respondent and it is pending with the higher authority and after getting the reply from the higher authority, the petitioner's request will be considered as per law. The Assessing Officer, should note that though the 2nd respondent is the superior officer in the hierarchy in the Department, nevertheless, he is the Assessing Officer of the 1st respondent and has got a statutory duty to complete the assessment in terms of the provisions of the Act and apply the proper legal principles and not solely to be guided by what his superior says.

4 In fact, this observation is in tune with the decision of the Hon'ble Division Bench of this Court in Madras Granites Private Limited Vs. Commercial Tax Officer, Arisipalayaam Circle, Salem and another reported in [2006] 146 STC 642 [Mad]. The Hon'ble Division Bench pointed out the role of the Assessing Officer, vis-a-vis, the D3 Proposal. At this stage, it would be beneficial to refer to the relevant portion of the said judgment.

> "......
> 4.No doubt, the assessing Officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of the D3 proposal forwarded by the Assistant Commissioner [CT], Enforcement. We find from the records that in D3 proposal, the Deputy Commissioner [CT], Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner [CT], Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D3 form, we find that the assessing officer, who is lower in rank in the

> hierarchy of officers, is bound by the said direction and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D3 proposal. 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. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal, confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the 1st respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected WPMPs are closed."

5 The above decision should be an eye-opener for the 1st to act as an independent authority. The procedure of sending the deviation proposal to the 2nd respondent is an internal matter. The statute does not state that the 1st respondent / Assessing Officer, should act as per the dictates of the 2nd respondent. The pre-revision notices were issued to the petitioner pursuant to an inspection by the Enforcement Wing in the business premises of the petitioner. This Court, in recent decisions, has held that the report can at best, be treated as an information or the first information to the Assessing Officer giving a cause of action for issuing the revision notice and nothing more can be attached to such a report given by the Enforcement Wing. It is thereafter, the entire proceedings are in the hands of the 1st respondent who should exercise his statutory powers, apply correct legal principles and then take a decision in the matter.

6 Accordingly, the writ petitions stand disposed of by directing the 1st respondent to independently apply his mind to the reply submitted by the petitioner and take a decision in respect of the Assessment Years 2007-2008 to 2014-2015 after affording an opportunity of personal hearing to the petitioner and the 1st respondent need not await the direction or advise

that may be rendered by the 2nd respondent based on his deviation proposal. The above direction to be complied with by the 1st respondent as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP
To
1.The Assistant Commissioner [CT]
Valluvarkottam Assessment Circle
No.10, Palaniappa Maligai
Greams Road, Chennai 600 006.

2.The Joint Commissioner [CT]-I
[Enforcement], Anna Pavazhavizha
Building, Greams Road,
Chennai 600 006.

+1cc to Mr.N. Inbarajan, Advocate, S.R.No.51827
+1cc to the Government Pleader, S.R.No.52045

RSY(CO)
EU(29/09/2016)

WP.Nos.31823 to 31830/2016