IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.35360 to 35362 of 2016

M/s.Vaduvambikai Enterprises,
Rep., by its Managing Partner,
Plot No.4165, Door No.32, V.Block,
Anna Nagar, Chennai - 600 040. .. Petitioner in all W.Ps.,

Versus

1.The Commercial Tax Officer,
Perambur Assessment Circle,
No.15, 16, Malligai Avenue,
100 Feet Road, Retteri,
Kolathur, Chennai - 600 099.

2.The Deputy Commissioner,
Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006.

3.The Commercial Tax Officer,
Group-I Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006. .. Respondents in all W.Ps.,

Common Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impunged proceedings of the first respondent in TIN/33451040654/2007-2008, 2008-09, 2009-10 and quash the impugned order dated 01.09.2016, as passed contrary to the principles of natural justice and further direct the first respondent to consider the objections dated 23.03.2016 filed by the petitioner in an independent manner not being influenced by the proposals received from the second and third respondents and pass a fresh assessment order in accordance with law.

For Petitioner : Mr.P.Rajkumar in all Wps
For Respondent : Mr.S.Kanmani Annamalai, AGP in all Wps

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai,learned Additional Government Pleader appearing for the respondents. With the consent on either side, the Writ Petition itself is taken up for final disposal. Since, all the Writ Petitions have been filed challenging the orders of assessment for the years 2007-08 to 2009-10 and the issues arising thereunder being common, the Writ Petitions were heard together and disposed of by this common order.

2. The petitioner is a partnership firm engaged in civil construction works such as road laying works for the Corporation of Chennai and is registered dealer on the file of the first respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) till the assessment year 2009-10. Thereafter, the petitioner is a registered on the file of the Assistant Commissioner, Amanjikarai Assessment Circle from the assessment year 2009-10 onwards.

3. The place of business of the petitioner was inspected by the Enforcement Wing officials on 18.09.2014, and at the time of inspection, it appears that there were certain discrepancies and errors, which translated into the form of a report, based on which the first respondent issued notices, dated 22.01.2016, proposing to revise the total and taxable turnover, and to reverse the input tax credit availed by the petitioner on various grounds. The discrepancies pointed out pertaining to (1) short reporting of deemed sale value in the monthly return; (2) non-arrival of deemed sale value on the charges for transportation of the goods to the work site; (3) non-arrival of deemed sale value. The notice also proposed to levy penalty under Section 27(3) of TNVAT Act. The petitioner submitted their objections, dated 23.03.2016 for each of the four issues, which were raised in the respective notices. Apart from placing factual details, the petitioner submitted the Assistant Commissioner (CT), Amnjikarai, Assessment Circle assess the turnover in identical circumstances for the assessment years 2010-11 to 2014-15, which was challenged by the petitioners by filing Writ Petitions, which were allowed and remitted back to the Assessing Officer. The petitioner enclosed the copy of the order for the perusal of the first respondent. The first respondent after receipt of the objections, completed the assessment by passing the impugned assessment orders.

4. Before going into the factual aspects of the matter, it has to be seen as to whether there has been effective consideration of the objections filed by the petitioner and whether the first respondent has taken note of the directions issued in W.P.Nos. 27479 to 27483 of 2015, filed by the petitioner in respect of assessment orders for the year 2007-08 to 2014-15, wherein identical turnover was assessed to tax and the Court has set aside the assessment order and remitted the matter back to the Assessing Officer with certain directions. Though the first respondent might not have been the first respondent in the said Writ Petition, yet the order and direction pertaining to the same company and relating to identical transaction, the order and direction of this Court should have persuasive value on the Assessing Officer. The Assessing Officer, while passing the impugned assessment orders, has taken note of the order passed in the earlier Writ Petitions and has referred to the same in paragraph 4 of the order, however, has made an erroneous observation that by referring to the proposals made by the Enforcement Wing and observed that knowingly the petitioner has not even filed the basic details such as profit and loss account, audited balance sheet, details of work etc. However, the Assessing Officer did not made any endeavour to direct the petitioner to produce those documents, infact in the earlier Writ Petitions, the direction was to the said effect by directing the Assessing Officer to direct the petitioner to produce the account books and the Assessing Officer to look into the objections as well as the documentary evidence. Therefore, the correct procedure that should have been adopted by the first respondent is to direct the petitioner to produce the books of accounts and other details and then find out as to whether the objection raised by the petitioner is sustainable or not. This having not been done, is sufficient to send back the matter for redoing the matter.

5. One more aspect, which has to be pointed out is that the Assessing Officer appears to have been carried away solely by the report of the Inspecting Officer. This is evident from the observations contained in the assessment order, wherein the Assessing Officer states that the Inspecting Officers have taken a lenient view and sent a proposal for implementation as per the sworn statement obtained from the petitioner during the course of inspection. Time and again, this Court has pointed out that the Assessing Officer is an independent statutory authority , he cannot be directed to act in a particular manner nor he can be solely influenced by the observations of the Inspecting Team, the report of the Inspecting Team at can be a starting point for

issuance of a pre-assessment notice.

6. On notice being sent to the dealer, if the dealer files his objections, then it is for the Assessing Officer to independently apply his mind to the objections and then rule on the objections. While doing so, the Assessing Officer cannot state that he has been directed by the Inspecting Officer to implement a proposal, if this is done then it would amount to clear abdication of the statutory duties of the Assessing Officer. This is also one more reason to remit the matter to set aside the impugned order and remit the matter to the Assessing Officer for fresh consideration.

7. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the first respondent, who shall direct the petitioner to produce the profit and loss accounts, audited balance sheets, details of work order awarded, works completed an on going projects, contract receipts with TDS deduction certificate in Form R/T, material purchases, labour and other charges and other account books and after thoroughly considering the petitioner's objections during the course of personal hearing, the first respondent shall redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pbn

To

1.The Commercial Tax Officer,
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+1cc to Mr.P. Rajkumar, Advocate, S.R.No.68397
+1cc to the Government Pleader, S.R.No.68292

md(04/01/2017)

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