IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.4177 & 4178 of 2016 and
W.M.P.Nos.3494 & 3495 of 2016

Jai Sai Mobiles,
53/27, New Colony, 1st Street,
Velachery, Chennai - 600 042
rep by its Proprietor. ... Petitioner in both W.Ps

Vs.

The Commercial Tax Officer,
O/o Assistant Commissioner of Commercial Taxes,
Nanganallur Assessment Circle,
No.30, Medavakkam Main Road,
Ullagaram, Chennai - 600 091. ... Respondent in both W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent in his proceedings leading to passing of the Revised Assessment Order vide TIN/33350989881/2013-14 and TIN/33350989881/2012-13 dated 30.10.2015, quash the same and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

For Petitioner (in both W.Ps) : Mr.S.Sathiyanarayanan

For Respondent (in both W.Ps) : Mr.Cibi Vishnu, Additional Government Pleader (T)

COMMON ORDER

The petitioner has filed the above Writ Petitions to issue writ of certiorarified mandamus to call for the records of the respondent in proceedings leading to passing of the Revised Assessment Orders vide TIN/33350989881/2013-14 and TIN/33350989881/2012-13 dated 30.10.2015 and to quash the same and direct the respondent to pass fresh revised assessment orders after providing an opportunity of reply and personal hearing.

2.The learned counsel appearing for the petitioner submitted that the issues involved in these Writ Petitions are covered by the decision of this Court made in CDJ 2014 MHC 5783 [Infiniti Wholesale Limited, (formerly known as Woolworths Wholesale (India) Private Limited, represented by its Company Secretary, Vikram Jain, Chennai Vs. The Assistant Commissioner (CT), Koyambedu Assessment Circle, Market Management Committee Building, Koyambedu] wherein this Court held as follows:

> "This Court is of the view that the above referred to decisions squarely cover the case on hand. The only conclusion that could be arrived is the ITC availed by the petitioner could not have been proposed to be reversed or reversed on the grounds stated by the respondent, i.e., the selling dealer has not filed returns or not paid taxes or they were unregistered dealers or their registrations were retrospectively cancelled."

3.Mr.Cibi Vishnu, learned Additional Government Pleader (Tax) taking notice for the respondent submitted that the issue involved in these Writ Petitions are covered by the judgment relied upon by the learned counsel for the petitioner.

4.In these circumstances, following the judgment rendered in CDJ 2014 MHC 5783, since the exercise of the jurisdiction by the respondent itself is ex-facie arbitrary, the proceedings are not only vitiated by serious procedural infirmities, but are arbitrary and unreasonable and without jurisdiction, which are liable to be set aside. Accordingly, the impugned order dated 30.10.2015 are set aside and the Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

va/sr

To

The Commercial Tax Officer,
O/o Assistant Commissioner of Commercial Taxes,
Nanganallur Assessment Circle,
No.30, Medavakkam Main Road,
Ullagaram, Chennai - 600 091.

+2 ccs to Mr.S.Sathiyanarayanan Advocate sr.9259,9260
+1 cc to the special Government Pleader sr9354

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