IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.6431 of 2016
&
W.M.P.No.5715 of 2016

M/s.HIL Limited (Formerly Hyderabad Industries Ltd)
Rep. by its General Manager - Operations
and Authorized Signatory
Mr.C. Gangadharan
Kannigaiper Village
Periyapalayam Road
Tiruvallur- 601 102. ... Petitioner

Vs.

1. The Assistant Commissioner(CT)
Madhavaram Assessment Circle
170 G.N.T.Road, Puzhal Camp
Chennai-600 066.

2. The Commercial Tax Officer
Group-III Enforcement (Central)
PAPJM Building
Greams Road
Chennai-600 006.

3. The Deputy Commissioner(CT)
Enforcement (Central)
Greams Road
Chennai- 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the impugned proceedings of the first respondent in TIN : 33531080477/2011-2012 and quash the order dated 18.01.2016 as passed contrary to the provisions of the TNVAT Act and also against the principles of law laid down by the Madras High Court in a catena of decisions and further forebear the first respondent from passing a revised assessment order for the assessment year 2011-2012 under the TNVAT Act based on the directions given by the second and third respondents in view of the law laid down by the Division Bench of the Madras High Court in the case of Madras Granites(P) Ltd Vs Commercial Tax Officer Arisipalayam Circle reported in 146 STC 642, State of Tamil Nadu vs. ANS Gupta & Sons reported in 38 VST 45 and also in the case of Amutha Metals Vs Commercial Tax Officer, Mannady (East)

Assessment Circle reported in 9 VST 478 and also in the case of M/s.Bhuvanaeswari & Co vs. CTO & others in W.A.Nos. 521 and 522/2013.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified mandamus to call for the records in the proceedings of the first respondent in TIN No.33531080477/2011-2012 and quash the order dated 18.01.2016 and further forebear the first respondent from passing a revised assessment order for the assessment year 2011-2012 under the Tamil Nadu Value Added Tax Act, based on the directions given by the respondents 2 and 3.

2. According to the petitioner, the second respondent, along with the officials of the Enforcement Wing, conducted inspection from 9.12.2011 and 22.12.2011 at the business premises of the petitioner and adopted a totally wrong methodology for adopting the stock variation both for manufactured goods and trading goods. Further, even though the petitioner filed detailed objection dated 2.9.2015 along with the statements and documents to show that the alleged stock variation arrived at by the Enforcement Wing officials are contrary to the facts and law, the first respondent proceeded to pass the impugned order dated 18.1.2016 for the only reason that the correct figures were not furnished by the petitioner at the time of inspection before the Enforcement Wing officials. Further, according to the petitioner, the first respondent, being a quasi-judicial authority, is to apply his independent mind while making an assessment and should not be influenced by the report or directions of his higher officials or the Enforcement Wing officials. Further, the petitioner contended that the respondents have committed an error in adding equal amounts towards probable omissions.

3. Mr.Manoharan Sundaram learned Additional Government Pleader, takes notice for the respondents and submitted that since the petitioner is disputing the factual aspects, the same can be decided only by the appellate forum and not under Article 226 of the Constitution of India.

4. On a perusal of the impugned order, it could be seen that the first respondent had considered the contentions of the petitioner and has given a finding. While coming to the conclusion, the first respondent also observed that in the absence of correct figures being furnished as alleged by the dealers, there is no other alternative to the inspecting

officials except to adopt the figures as furnished by the dealers only at the time of inspection. Observing so, the first respondent rejected the contentions of the petitioner. Therefore, it cannot be said that the first respondent had totally ignored the contentions raised by the petitioner.

5. Since the contentions now raised before this court are on factual aspects. As rightly contended by the learned Additional Government Pleader, the same can be decided only by the appellate authority and not under Article 226 of the Constitution of India.

6. The petitioner has got appellate remedy to challenge the findings of the first respondent dated 18.01.2015. Since the petitioner has got appellate remedy, I am of the considered view that the writ petition filed by the petitioner challenging the impugned order is liable to be rejected. It is open to the petitioner to challenge the impugned before the appellate authority.

With these observations, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rj
To

1. The Assistant Commissioner(CT)
Madhavaram Assessment Circle
170 G.N.T.Road, Puzhal Camp
Chennai-600 066.

2. The Commercial Tax Officer
Group-III Enforcement (Central)
PAPJM Building
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+1cc to Mr.P.Rajkumar, Advocate, S.R.No.11001
+1cc to the Government Pleader, S.R.No.11241

W.P.No.6431 of 2016 &
W.M.P.No.5715 of 2016

CNR(CO)
CA(25/02/2016)