BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.09.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) Nos.17425 to 17427 of 2016
and
WMP(MD)No.12622 to 12624 of 2016

M/s.Rasathe Garments,
rep. by its Partner,
No.443, Main Bazaar,
Virudhunagar .. Petitioner in all the writ petitions

Vs.

The Commercial Tax Officer-I (FAC),
Virudhunagar. .. Respondents in all the writ petitions

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN: 33945720974/2012-13; TIN: 33945720974/2013-14 & TIN: 33945720974/2014-15 quash the pre-assessment notice dated 24.08.2016, respectively, issued therein.

For petitioner in all the W.Ps. ... Mr.R.L.Ramani, Senior Counsel for Mr.S.Raja Jeyachandra Paul

For Respondents in all the W.Ps. ... Mr.R.Karthikeyan Additional Government Pleader

COMMON ORDER

The impugned notices, dated 24.08.2016, in which, the tax and penalty to be paid, has been fixed and thereafter, objections called for, is under challenge.

2.Heard the learned counsel for the petitioner. Mr.R.Karthikeyan, learned Additional Government Pleader, takes notice for the respondents.

3.The learned counsel for the petitioner relied upon earlier judgment of this Court in ***MADRAS GRANITES (P) LTD.,v.COMML.TAXOFFICER (Mad.)*** reported in 2006 STC 642 (Vol.146), which was thereafter, followed by the learned single Judge of this

Court in the case of ***M/s.SNEH COMMUNICATION, REP. BY ITS MANAGER JITENDRA JAIN v.THE ASSISTANT COMMISSIONER (CT), KODAMBAKKAM ASSESSMENT CIRCLE, CHENNAI-6*** (W.P.Nos.18762 to 18764 of 2016), under which, it has been held that the assessing officer being a statutory authority has to independently apply his mind and afford reasonable opportunity to the petitioner with a direction to them to produce the Books of Account and thereafter to complete the assessment.

4.The learned counsel for the petitioner also pointed out that as the original assessment is a deemed assessment, the petitioner was not given opportunity to produce the Books of Accounts and therefore, when the Inspecting Authority submitted a final report, the assessing authority should not have accepted the same and before that they should have called for Books of Accounts and then they should have completed the assessment.

5.Under the legal propositions and the legal dictum enunciated in the above two cases, this Court is of the view that before completing the assessment, the authorities should have given opportunity to the petitioner to produce the Books of Accounts and after enquiry and personal hearing only, they should have completed the assessment.

6.The pre-assessment notice, dated 24.08.2016, shall be treated as a notice calling for objections in respect of the inspection report submitted. The petitioner shall submit his objections and produce all the records and the authorities shall verify the records in the presence of the petitioner. Opportunity of hearing must be given to the petitioner. After enquiry and personal hearing, the authorities shall complete the assessment.

7.With the above directions, the writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer-I (FAC),
Virudhunagar.

+ 1 CC TO Mr.S.RAJA JEYA CHANDRA PAUL, ADVOCATE IN SR No. 52367
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 52841

RJ2/AKV
TE/SK-SKN : 24/10/2016 : 2P/4C

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