In the High Court of Judicature at Madras

Dated : 24.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.30353 to 30358 of 2017 &
WMP.Nos.33086 to 33091 of 2017

M/s.Sakthi Gear Products, rep.by
its Partner K.Shanmugasundaram ..Petitioner in all WPs

Vs

The Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-18. Coimbatore District. ..Respondent in all WPs.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus directing the respondent to finalize the assessments for the years 2010-11 to 2015-16 under TNVAT Act 2006 upon due consideration of the petitioner's reply dated 30.6.2017 in accordance with law and without being solely influenced by the proposals of the Enforcement Wing Officials.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. Considering the nature of relief sought for by the petitioner, this Court is inclined to dispose of the writ petitions at the admission stage itself.

2. The petitioner has come forward with these writ petitions praying for a direction to the respondent to finalize the assessments for the years 2010-11 to 2015-16 by considering the petitioner's objections dated 30.6.2017 without being solely guided and influenced by the report of the officials of the Enforcement Wing.

3. In fact, there is no necessity for such a direction when it is a legal requirement.

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4. Nevertheless, the petitioner apprehends that the respondent will not independently decide the matter, but will be solely guided by the report of the officials of the Enforcement Wing, as the respondent may face other difficulties in his career, if he goes against the report of the officials of the Enforcement Wing.

5. Assuming that such is the situation prevalent in the Commercial Taxes Department, the same requires to be deprecated. There are several decisions, which the respondent would be aware of wherein it was held that the Assessing Officer is an independent authority and has statutory powers to finalize the assessments. Therefore, he has to act in an independent manner, consider the objections and take a decision.

6. The report of the officials of the Enforcement Wing can, at best, be a material, which can be used for issuing the revision notice. However, after reply is given by the dealer, the Assessing Officer is bound to consider the reply and finalize the assessment based upon the facts and materials placed before him and he cannot close his eyes and state that the officials of the Enforcement Wing have given an adverse report against the petitioner and that therefore, he will blindly follow the report. If the Assessing Officer does so, he will be abdicating his statutory duty.

7. A useful reference can be made to the decision in the case of Madras Granites Pvt. Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642], in which, the Hon'ble Division Bench of this Court considered as to how the Assessing Officer should conduct himself and complete an assessment when there is a D3 proposal forwarded by the Assistant Commissioner (CT). The Hon'ble Division Bench further pointed out as follows :

> "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 D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 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

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in D-3 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 D-3 proposal and also levied the penalty in the manner indicated in D-3 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 first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner."

8. With the above observations, the writ petitions are disposed of with a direction to the respondent to finalize the assessments by considering the objections dated 30.6.2017 filed by the petitioner and taking note of the materials placed after affording an opportunity of personal hearing. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

The Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-18. Coimbatore District.

+ 6 ccs to M/s. R. Hemalatha, Advocate Sr.83762
+ 1 cc to Special Government Pleader sr.83926

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