IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.21252 to 21255 of 2017

and

WPMP Nos.22157 to 22160 of 2017

M/s. Abhinitha Foundation Pvt. Ltd.,
Represented by its Managing Director,
Mr. V.Doraiswamy,
No.6C Ground Floor, Vikas Vaikunt,
Bharathi Avenue, 3rd Street,
Kotturpuram,
Chennai - 600 085 ... Petitioner in all W.Ps.

..vs..

The Commercial Tax Officer,
T.Nagar Assessment Circle,
Chennai - 600 017 ... Respondents in all W.Ps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent, in his proceedings in TIN:33351582163/2013-14; 2014-15; 2015-16; all dated 14.06.2017 and TIN:33351582163/2016-17, dated 31.05.2017, quash the same and to direct the respondent to consider the objections, dated 17.04.2017; 25.04.2017; 29.04.2017 and 02.05.2017, respectively, filed by the petitioner with an open mind and not being influenced by any report of the Enforcement Wing Officials and to pass a fresh assessment order in accordance with law.

For Petitioner in all W.Ps. : Mr. P.Rajkumar

For Respondents in all W.Ps. : Mr. K.Venkatesh,
Govt. Advocate

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr. K.Venkatesh, learned Government Advocate, who accepts notice for the respondents, in all the above petitions. With consent of the learned counsel for both sides, the writ petitions themselves are taken up for final disposal at the admission stage itself.

2. The petitioner, who is a registered dealer on the file of the respondent is before this Court, challenging the orders of assessment for the years 2013-14, 2014-15, 2015-16 and 2016-17.

3. Under normal circumstances, this Court will not entertain the writ petition, challenging the order of assessment, as the Tamil Nadu Value Added Tax Act, 2006, provides for an alternative remedy of filing an appeal before the Appellate Assistant Commissioner. However, in these cases, the Court is inclined to entertain the writ petitions, at the very threshold on account of the glaring errors, which are manifest and on a bare reading of the impugned assessment orders.

4. The assessments have been completed in total violation of principles of natural justice and without proper application of mind. Though the Assessing Officer took pains to cull out details from the Official Website of the Department and issued elaborate notices and called for objections from the petitioners, on receipt of the objections from the petitioner, he has totally abdicated his responsibility and completed the assessments in a most cryptic manner.

5. For all the assessment years, the impugned orders are identical and in fact, the respondent has not even referred to the correct date, on which the petitioner has filed the objections, but stated as if the petitioner has filed objections for all the assessment years, on 02.05.2017, when the record shows that the petitioner filed objections on 17.04.2017 for 2013-14, 25.04.2017 for 2014-15, 29.04.2017 for 2015-16 and 02.05.2017 for 2016-17 and this is one more reason to hold that there has been no application of mind on the part of the respondents.

6. In the objections filed by the dealers, apart from furnishing details on the proposals made, the petitioner requested for providing the name of the seller and TIN Number to the seller from pages 1 to 7 of the notices to enable verification at their end. The respondent has not even adverted to such request. On a perusal of the revision notices, it is seen that in respect of those pages, TIN Number and name of the sellers have not been furnished. In respect of the transactions, where TIN Number and the name of the dealers have been furnished, the petitioner has given explanations. This appears to be for all the issues pointed out by the respondent in the revision notice.

7. Ultimately, the petitioner requested for verification of the vouchers and produced records to the effect that there is no liability on their part. There is an Annexure to the objections filed by the petitioner, which is a tabulated statement containing the names of the seller, TIN Numbers, Commodity Codes, Invoice Numbers, Invoice Dates, Amounts, Tax Rates, Values and Months of sales tax returns, etc., Though such voluminous records have been placed before the Assessing Officer, he has failed to advert to any of the records and the assessments have been completed by passing a single line order stating that the objections given by the petitioner is not acceptable for the reason that they have not furnished material evidence.

8. When the respondent had issued revision notices enclosing extracts from the Official Website of the Department, alleging mismatch between the Annexure I returns filed by the petitioner and that of the Annexure II of the other end dealers, the respondent should have to be borne in mind the law laid down by this Court, in the case of J.K.M. Graphics Solutions Private Limited v. Commercial Tax Officer (2017) 99 VST 343 (Madras).

9. Further, when the facts are complicated, the Hon'ble Division Bench has pointed out, in the case of S.R.C.Projects Pvt. Limited v. The Commissioner of Commercial Taxes, Chennai and another, reported in (2010) 33 VST 333, that the Assessing Officer should give an opportunity of personal hearing to the dealer. If that had been done by the respondent in the instant case, it would not have resulted in passing of the impugned orders. Thus, the impugned assessment orders cannot be allowed to stand.

10. Therefore, this court can safely presume that the respondent had passed these impugned orders solely for the purpose of implementing the proposal given by the Enforcement Wing, which should not have been done, as pointed out by this Court, in several decisions, that the report of the Enforcement Wing can, at best, be a cause of action, for issuing show cause notice. Once the dealer files objections, the Assessing Officer has to independently apply his mind and take a decision on the facts placed before him.

11. Thus, for all the above reasons, the impugned orders are liable to be set-aside. Accordingly, the writ petitions are allowed, the impugned orders are set-aside, the matters are remanded back to the respondent, for fresh consideration, who shall direct the petitioner to appear in-person, furnish all informations sought for by them, give the petitioner a reasonable time to file additional objections and after receipt of the additional objections, the respondent shall provide an opportunity of personal hearing, reconcile the details furnished by the petitioner and thereafter, proceed to complete the assessments by passing a reasoned order, on

merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To
The Commercial Tax Officer,
T.Nagar Assessment Circle,
Chennai - 600 017

+1cc to Mr.P.Raj Kumar, Advocate, S.R.No.57324
+1cc to the Government Pleader, S.R.No.57620

W.P.Nos.21252 to 21255 of 2017 &
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GN(29/08/2017)