IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.21511 to 21513 of 2017
and
W.M.P.Nos.22498 to 22500 of 2017

Tvl.Kousic & Co.,
represented by its Partner,
K.G.Mohanraj,
No.A/24, Housing Unit,
Kollampalayam,
TNWD, Erode District. .. Petitioner in all the W.Ps.

Vs

1. The Commercial Tax Officer,
   Office of the Assistant Commissioner,
   Enforcement Wing (Group IV),
   Erode.

2. The Assistant Commissioner (CT),
   Erode (Rural) Assessment Circle,
   Erode.

.. Respondents in all the W.Ps.

W.P.No.21511 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the first respondent in TIN.No.33322902398/2012-13 dated 26.09.2016 and connected proceedings of the second respondent in TIN.No.33322902398/2012-13 dated 29.05.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

W.P.No.21512 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the first respondent in TIN.No.33322902398/2013-14 dated 26.09.2016 and connected proceedings of the second respondent in TIN.No.33322902398/2013-14 dated 29.05.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

W.P.No.21513 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the first respondent in TIN.No.33322902398/2014-15 dated 26.09.2016 and connected proceedings of the second respondent in TIN.No.33322902398/2014-15 dated 29.05.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.K.Venkatesh,
Government Advocate (Taxes)

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes), accepting notice on behalf of the respondents.

2.With the consent of the learned counsel on either side, the writ petitions are taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the second respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), is aggrieved by the notices issued by the first respondent who is the Assistant Commissioner of the Enforcement Wing, dated 26.09.2016 and the notices issued by the second respondent dated 29.05.2017. The petitioner appears to have no serious objection to submitting the objections to the notices issued by the second respondent who is the petitioner's assessing officer. But the petitioner is greatly aggrieved by the notices issued by the first respondent dated 26.09.2016, contending that the first respondent being an Enforcement Wing Officer has no jurisdiction to call upon the petitioner to file objections or to produce books of account or to attend the personal hearing and the manner in which the notices have been issued and its tenor will clearly establish that the petitioner has been threatened and coerced to submit to the jurisdiction of the first respondent. The petitioner is partly right in contending that the first respondent cannot issue the impugned notices, especially the manner in which it has been issued and it appears that notices for re-assessment of the turnover were issued for the relevant assessment years which could be done only by the assessing officer. However, it is seen that the notices were issued by the first respondent in September 2016, after which it appears that no further action has been initiated and the second respondent, the petitioner's assessing officer, has issued the notices dated 29.05.2017 under Section 27 of the TNVAT Act. The petitioner's apprehension is that if the notices issued by the first respondent dated 26.09.2016 are allowed to stand, then the assessing officer will not independently take a decision on the petitioner's objections to his notices dated 29.05.2017. It is further submitted that the assessing officer, being an independent authority, is required to consider the objections uninfluenced by any observation by the Enforcement officers or by his superior officers. In support of the said contention, the learned counsel for the petitioner placed reliance upon the decision of a Division Bench of this Court in the case of Madras Granites (P) Ltd. v. Commercial Tax Officer, Arisipalayam Circle, Salem and another, reported in 2006 Vol.146 STC 642, and the decision of this Court in Amutha Metals v. Commercial Tax Officer (Mad) reported in [2007] 9 VST 478 (Mad) and also the decision of this Court dated 21.11.2014 in W.P.No.29465 of 2014 etc., in Tvl.Narasus Roller Flour Mills, Salem v. The Commercial Tax Officer (Enforcement Wing), Sankagiri, Salem District and another.

4.I have heard the learned Government Advocate (Taxes) on the above submissions.

5.As pointed out earlier, the first respondent, being an Enforcement Wing official, cannot usurp the powers of the assessing officer. All that can be done is to prepare a report based on the inspection conducted in the place of business of the petitioner and it can at best give cause of action for issuing a revision notice and upon issuance of the revision notice by the assessing officer and inviting objections from the dealer, the assessing officer has to independently consider the objections and take a decision in the matter uninfluenced by any observations made by the Enforcement Wing official in the D3 proposal. Thus, the notices issued by the first respondent cannot be enforced.

6.For the above reasons, the writ petitions are partly allowed and the notices issued by the first respondent dated 26.09.2016 are held to be non-est in the eye of law and accordingly the same are set aside and the petitioner is directed to submit their objections to the notices issued by the second respondent dated 29.05.2017 within a period of fifteen days from the date of receipt of a copy of this order, after which the second respondent shall afford an opportunity of personal hearing to the petitioner and complete the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KM

To

1. The Commercial Tax Officer,
   Office of the Assistant Commissioner,
   Enforcement Wing (Group IV),
   Erode.

2. The Assistant Commissioner (CT),
   Erode (Rural) Assessment Circle,
   Erode.

+1 CC to Mr.R. Senniappan, Advocate sr 58402.

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KS(CO)
sp(29/08/2017)