IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21587 of 2017
& WMP.No.22572 of 2017

M/s. M.D. Overseas Ltd.,
Rep. by its Manager,
No.216/21, (Old No.130)(Basement),
Dhanalaxmi Complex,
NSC Bose Road,
Chennai-600 079. ... Petitioner

Vs.

1. Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The Joint Commissioner (CT),
Enforcement – I,
Chennai – 600 006.

3. The Commercial Tax Officer,
Group-II, Enforcement (Central),
Greams Road, Chennai – 600 006.

4. The Assistant Commissioner, (CT),
Peddunaickenpet Assessment Circle,
Chennai. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the third respondent in his VAT Audit report dated 30.01.2017 and to quash the same as the VAT Audit was conducted without jurisdiction as per the orders of the first respondent as per TNVAT Act.

For Petitioner : Mr.C.Baktha Siromoni

For Respondents : Mr.K.Venkatesh
Government Advocate (Taxes)

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ORDER

Heard Mr.C.Baktha Siromoni, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate (Taxes), who accepts notice on behalf of the respondents and with their consent, the Writ Petition is taken up for disposal.

2. The petitioner is a registered dealer on the file of the fourth respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act). In this writ petition, the petitioner challenged the validity of the VAT audit, conducted by the officials of the Department based upon the authorization given by the second respondent/ The Joint Commissioner (CT), Enforcement-I, Chennai.

3. The first and foremost contention raised by the petitioner is that Section 64 (4) of the TNVAT Act specifically empowers the Commissioner of Commercial Taxes that the order authorising the lower level officials to conduct VAT audit in the business place of any registered dealer, such VAT audit is required to be done by the Officer not below the rank of Deputy Commercial Tax Officer. It is submitted that in the case on hand, the VAT audit is conducted as per the authorization issued by the second respondent/The Joint Commissioner, which is illegal and without jurisdiction.

4. Therefore, it is submitted that when a Statute stipulates that a particular thing is to be done in a particular manner, it shall have to be done in that manner alone. In support of such contention, the learned counsel for the petitioner placed reliance upon the decision of the Hon'ble Supreme Court of India reported in **[(2008) 9 SCC 177]** in the case of (**M/s. Meera Sahani Vs. Lieutenant Governor of Delhi).** By way of subsidiary contention, the learned counsel would state that as per the guidelines given for VAT audit in the circular instructions dated 16.05.2014, it was observed that if any VAT audit was conducted after 01.01.2007, then the same assessee cannot be subjected to VAT audit for the second time. Therefore, it is submitted that the impugned VAT audit is also bad for such reason. With regard to the jurisdiction of the second respondent to authorize VAT Audit, the question arose for consideration before this Court in the case of **M/s. Original Vel Sporting News Vs. The Joint Commissioner (CT)** in W.P. Nos.30098 to 30104 and 32479 of 2016 dated 26.07.2017. In the said case, the identical contention with regard to the jurisdiction of the second respondent was raised and the Court, after taking into consideration two earlier decisions in W.P. Nos.32566 and 32641 to 32645 of 2016 dated 11.01.2017 **(M/s. Jeevan Buy N. Save, rep. by its proprietrix Vs. The Joint Commissioner of Commercial Taxes and Others)** holding that the Statute prescribes that the Commissioner alone can authorize VAT Audit, the Joint Commissioner viz, the second respondent would have no jurisdiction to issue such authorization. Accordingly, the VAT Audit reports and the assessment orders in those writ petitions were set aside giving liberty to the Department to conduct a fresh VAT Audit, if necessary, in accordance with law.

5. The above decision would apply with full force to the case on hand. With regard to the subsidiary points raised by the learned counsel for the petitioner, I have my reservations with regard to the interpretation sought to be given by the petitioner to the circular instructions dated 16.05.2014. At best, it is only a circular and cannot have force of law. That apart, if the Commissioner opined that the facts and circumstances of the case warranting Audit, there cannot be any fetter to exercise such a power. Therefore, the circular can at best be held to be recommendatory for the purpose of guidance and cannot have force of law.

6. For all the above reasons, the Writ Petition is allowed and the impugned VAT Audit proceedings dated 16.05.2014 are set aside and consequential revision notices if issued are also set aside with a direction to the respondents to conduct VAT Audit by following the provisions of Section 64 (4) of the TNVAT Act, 2006. No costs. Consequently, connected miscellaneous petition is closed.

27.11.2017

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Index:Yes/No

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T.S.SIVAGNANAM, J.,
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