IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.09.2017
CORAM
THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM
WP.Nos.23389 and 23390 of 2017
&
WMP.Nos.24492 to 24495 of 2017

Izza Leather Exports,
Represented by its Partner,
Thuthipet,
Gudiyatham

... Petitioner in both WPs

Vs

1.The Commercial Tax Officer (Main)
Gudiyatham (West)

2.Joint Commissioner (Enforcement)
Vellore.

... Respondents in both WPs

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari to call for the records of the 1st respondent in TIN No.33626351262/2015-16 dated 12.01.2017 and quash the same.

For Petitioner :: Mr.Adithya Reddy

For Respondents:: Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Adithya Reddy, learned Counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent.

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

3. The petitioner, is a dealer in leather, chemicals registered on the file of the first respondent under the provisions of the TNVAT Act 2006. In these writ petitions, the petitioner has challenged two orders of assessment, both for the year 2015-16. It is not known as to why the first respondent has passed two orders for the very same assessment year, when he could have very well combined both turnovers in a single order. Be that as it may. This Court proceeds to test the correctness of the impugned orders.

4. Though the impugned orders refer to the notice dated 15.12.2016, in the body of the impugned assessment orders, there is no finding recorded by the assessing officer as to on what date the notice was served on the petitioner, whether the petitioner sought time for filing objection or they did not file objection and as to why he has confirmed the proposal in the notice. However, the impugned orders solely proceed on the basis that the petitioner has accepted the omissions and paid the tax, when the inspection was conducted by the Enforcement Wing officials. Thus, on a reading of the impugned orders, it is clear that the petitioner was not issued any notice prior to completing the assessment and they had no opportunity to rebut the allegations against them. The first respondent had been solely guided by the findings recorded by the Enforcement Wing officials and the fact that the petitioner had paid the disputed tax by means of cheques to the Enforcement Wing Officials.

5. The learned Counsel for the petitioner would submit that the cheques were taken from the petitioner by threat and coercion by the the Enforcement Wing Officials and the cheques have been dishonoured for want of funds. In any event, the first respondent being the assessing officer of the petitioner cannot be solely guided by the proposal given by the Enforcement Wing Officials, but, can treat such proposal as a basis for issuing revision notice. After issuing revision notice, if the dealer submits his objection, then the assessing officer has to independently consider the above and frame the assessment. If he fails to do so, he will be abdicating his statutory powers which has been deprecated in several decisions such as Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri reported in 2015(81) VST 560, Madrs Granites (P) Ltd., Vs. C.T.O., Arisipalayam Circule reported in 2006 (146) STC 642 and Floor Fixers Vs. CTO, Kotturpuram Assessment Circle passed in WP.No.20364 to 20366 of 2016 on 02.08.2016.

6. As pointed out earlier, the first respondent did not afford a reasonable opportunity to the petitioner before impugned assessment orders were passed. For the above reasons, this Court is inclined to grant relief to the petitioner on the following terms:

In the result, the writ petitions are disposed of by directing the writ petitioner to treat the impugned proceedings as show cause notice and to file their objections, within a period of 15 days from the date of the receipt of copy of this order. On receipt of such objections, the first respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sai/nv

To

1.The Commercial Tax Officer (Main)
Gudiyatham (West)

2.Joint Commissioner (Enforcement)
Vellore.

+1 cc to Mr.Adithya Reddy Advocat sr 65072
+1 cc to the Special Government Pleader taxes 65493

WP.Nos.23389 and 23390 of 2017

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