IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3852 of 2017 &
W.M.P.No.3917 of 2017

GKI Constructions,
Rep. by its Proprietor K.Kamaraj,
No.13, Vignesh Nagar, Vinayagapuram,
Kolathur, Chennai - 600 039. ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Department of Commercial Taxes,
   Fort St. George, Beach Road,
   Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Elilagam, Chepauk,
   Chennai - 600 005.

3. The Deputy Commissioner (CT) Enforcement Wing,
   C.T.Buildings Greams Road, Chennai - 600 005.

4. Assistant Commissioner (CT),
   Surappattu Assessment Circle,
   Station : Kolathur, Chennai - 600 009. ...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the revision of assessment orders in his proceedings in RC/49/2016/A4(2014-2015 and 2015-2016) dated 28.04.2016 received by the petitioner on 04.07.2016 of the fourth respondent and quash the same and direct the fourth respondent to defreeze accounts afford an opportunity of personal hearing.

For Petitioner : Mr.P.Murali

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.P.Murali, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a civil contractor and registered as a dealer on the file of the third respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The business premises of the petitioner was inspected by the Enforcement Wing Officials on 04.09.2015 and 18.11.2015 and based on such inspection, a proposal was sent by the third respondent to the fourth respondent, the Assessing Officer of the petitioner, with a direction to implement the said proposal by issuing a notice. Accordingly, the fourth respondent issued a notice dated 01.02.2016. It appears that the petitioner was an unregistered dealer and only after the inspection was conducted, they got themselves registered under the TNVAT Act with effect from 21.03.2016. The respondent has completed the assessment and passed the impugned orders. The petitioner has challenged the same on several grounds and in particular, it has been passed without affording an opportunity of personal hearing and that the Assessing Officer cannot be solely guided by the proposal submitted by the Enforcement Wing Officials, but has to independently decide the matter on merits and in accordance with law.

3.In support of such contention, the learned counsel for the petitioner relied on the decisions in the case of M/s. SRC Projects Private Limited Vs. Commissioner of Commercial Taxes, Chennai and another, reported in 2010(33) VST 333 (Mad), Madras Granites Pvt. Ltd. Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in 2006 (164) STC 642, unreported decisions of this Court in the case of M/s.VE Commercial Vehicles Ltd., Vs. The Assistant Commissioner (CT) Salem in W.P.Nos.30971 to 30973 of 2014 dated 09.12.2014, Tvl.Narasus Roller Flour Mills Vs. The Commercial Tax Officer (Enforcement Wing), Sankagiri, Salem, District in W.P.Nos.29465 of 2014 etc., dated 21.11.2014 and VTX Industries Limited Vs. The Assistant Commissioner (CT) in W.P.Nos.27221 and 27222 of 2014 dated 14.10.2014.

4.On the above ground, the petitioner seeks for setting aside the impugned assessment orders and to direct the respondents to afford an opportunity of personal hearing to the petitioner and re-do the assessment.

5.The fourth respondent has filed counter affidavit, from which it is seen, the first six paragraphs are verbatim repetition of the assessment orders for both the assessment years 2014-15 and 2015-16. With regard to the contentions raised by the petitioner, the fourth respondent would contend that the petitioner has to avail the appellate remedy as against the impugned assessment orders and the writ petition is not maintainable.

6.After hearing the learned counsel for both parties and perusing the materials placed on record, including the counter affidavit filed by the fourth respondent, it is true that the petitioner has an alternative remedy of appeal as against the impugned assessment orders. However, when the petitioner points out that they did not have an adequate opportunity to put forth their contentions, this Court is entitled to direct the petitioner to once again approach the Assessing Officer with a further direction to the Assessing Officer to re-do the assessment. However, before issuing the such direction, the facts of the case should warrant for such direction. In the instant case, the learned Government Advocate reports that the petitioner has paid entire tax without prejudice to their rights and has also paid substantial amount of the penalty. The question would be as to whether penalty can be levied when the entire turnover has been culled out from the books account of the petitioner. However, this Court does not propose to express any opinion on the said issue at this juncture. In the light of the fact, that the petitioner has paid the tax as demanded and also part of the penalty, this Court is inclined to grant one more opportunity to the petitioner to explain his stand by approaching the Assessing Officer.

7.Accordingly, this writ petition is disposed of by directing the petitioner to treat the impugned orders as show cause notices and submit their objections, within a period of 15 days from the date of receipt of a copy of this order, after which the Assessing Officer shall afford an opportunity of personal hearing and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Commercial Taxes,
   Fort St. George, Beach Road,
   Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Elilagam, Chepauk,
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   Station : Kolathur, Chennai - 600 009.

+1 CC to Mr.P. Murali, Advocate sr 53639
+1 CC to The Spl. Govt. Pleader sr 54476.

W.P.No.3852 of 2017

EV(CO)
sp(21/08/2017)