IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.24740 of 2017
and W.M.P.No.26115 of 2017

Tvl.Tvarur Oil & Fats Pvt., Ltd.,
Represented by its Director,
Sumith Chaddha. ... Petitioner

vs

The Commercial Tax Officer,
Nagapattinam Assessment Circle,
C.T.Building, Court Campus,
Veliyapalayam,
Nagapattinam. ... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN: 33663542605/2013-14 dated 02.06.2017 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 : Mrs.Narmadha Sampath, Spl. GP

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader accepting notice for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act (TNVAT Act). The petitioner is aggrieved by an order of assessment passed by the respondent on 02.06.2017 for the year 2013 - 2014 under the TNVAT Act. On a perusal of the impugned order, it is evidently clear that the respondent has not considered the petitioner's objections though he has stated that the objections were considered in depth along with the certificates.

3. The respondent has completed the assessment solely relying upon the statement said to have been given by the Plant Manager at the time of inspection conducted by the Officials of the Enforcement Wing. The settled legal principle is that the Assessing Officer is an independent authority and cannot be solely guided by the report of the Enforcement Wing Officials, especially when a dealer has filed his objections to the revision of turn over. One such decision is in the case of Madras Granites (P) Ltd., vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another [reported in (2006) 146 STC 642]. The said case arose under the provisions of the Tamil Nadu General Sales Tax Act where the Assessing Officer completed the assessment solely based upon the proposal in D3 form. The Hon'ble Division Bench held it that the Assessing Officer is a quasi judicial authority and in exercising his quasi Judicial function of completing the assessment, he is not bound by the instructions of the directions of the higher authorities. Since, in the said case, the assessment was completed solely based upon on the D3 proposal, the assessment orders were set aside.

4. A similar view was taken in the case of Amutha Metals -vs- The CTO, Mannady (East) Assessment Circle, Chennai [reported in (2007) 9 VST 478 (Madras)] and in the case of Narasus Roller Flour Mills and another -vs- CTO and another [W.P.No.29465 of 2014 etc. cases dated 21.11.2014]. Though the Plant Manager of the petitioner might have given a statement before the Enforcement Wing Officials, that by itself will not operate as estoppal and prevent the dealer from raising the objections to the revision notice. In the instant case, the petitioner/dealer has raised their objections vide letter dated 29.04.2017. Therefore, the respondent was bound to consider the objection and could not have completed the assessment as done in the impugned order. For the above reasons, the impugned orders calls for interference.

5. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration after affording an opportunity of personal hearing to the petitioner. No Costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rna

To

The Commercial Tax Officer,
Nagapattinam Assessment Circle,
C.T.Building, Court Campus,
Veliyapalayam,
Nagapattinam.

+ 1 cc to MR. R. Senniappan, Advocate SR.67416
+ 1 cc to the Government Pleader SR.67673

W.P No.24740 of 2017
and W.M.P.No.26115 of 2017

VD(CO)
EU(23/10/2017)