In the High Court of Judicature at Madras

Dated : 10.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28708 to 28713 of 2017 &
WMP.Nos.30889 to 30894 of 2017

Tvl.Anbu Agency rep.by
by its Proprietor R.Anbu ...Petitioner in all W.Ps

Vs

1.The Principal Secretary/Commissioner
of Commercial Taxes, Exhilagam,
Chepauk, Chennai-5.

2.The Commercial Tax Officer,
Dharmapuri Assessment Circle,
Dharmapuri. .....Respondents in all W.Ps

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the second respondent in TIN 33623284122/2012-13, TIN 33623284122/2013-14, TIN 33623284122/2014-15, TIN 33623284122/2015-16, TIN 33623284122/2011-12, all dated 23.8.2017 and TIN 33623284122/2016-17 dated 14.9.2017 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the notices issued by the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, proposing to revise the assessments for the years 2011-12 to 2016-17.

3. The reason for approaching this Court by way of these writ petitions is that the second respondent - Assessing Officer is incapable of taking an independent decision in the matter, as

he is bound by the directives issued by the superiors either in the form of proposals from the officials of the Enforcement Wing or in the form of circulars.

4. The petitioner need not have any apprehension in this regard, since the law, on the subject, is well settled and one of the earliest decisions on this point is in the case of Madras Granites Pvt. Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642], in which, the Hon'ble Division Bench of this Court considered as to how the Assessing Officer should conduct himself and complete an assessment when there is a D3 proposal forwarded by the Assistant Commissioner (CT). The Hon'ble Division Bench further pointed out as follows :

> "No doubt, the Assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT), Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the Assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the Assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the Assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. It is well-settled 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 or directions of the higher authorities. We find that in both the matters the Assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders

of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the Assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner."

5. The second respondent should bear in mind the above decision while completing the assessment. It is no doubt true that the proposal of the officials of the Enforcement Wing reached the Assessing Officer, based on which, he issued the impugned notices. However, the report of the officials of the Enforcement Wing can be a basis for issuing the revision notices, after which, the dealer should given an opportunity to submit their objections. Once the objections of the dealer are on record, the Assessing Officer has to independently apply his mind to the objections given and the materials placed by the dealer before him and not to be solely guided by the report of the officials of the Enforcement Wing. The assessment proceedings being quash judicial proceedings, the second respondent should act in such a manner without giving room for any arbitrariness or capriciousness.

6. Accordingly, the writ petitions are disposed of with a direction to the second respondent to independently consider the petitioner's objections dated 06.9.2017 and 03.10.2017 to the impugned notices dated 23.8.2017 and 14.9.2017 and pass a speaking order on merits and in accordance with law, after affording an opportunity of personal hearing to the authorized representative of the petitioner. No costs. Consequently, the connected WMPs are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.The Principal Secretary/Commissioner of Commercial Taxes,
Exhilagam,
Chepauk, Chennai-5.

2.The Commercial Tax Officer,
Dharmapuri Assessment Circle, Dharmapuri.

+1 CC to Spl.Govt. Pleader sr 80032.
+1 CC to Ms.R. Senniappan, advocate sr 79889.

WP.Nos.28708 to 28713 of 2017&
WMP.Nos.30889 to 30894 of 2017

PPA(CO)
SP(27/11/2017)