IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.29978 of 2017 & W.M.P.Nos.32493 & 32494 of 2017

M/s.Globe Automobiles
Rep.by its Proprietor - K.Kaleel Rahman
...Petitioner

.Vs.

The Commercial Tax Officer (Addl)
Tindivanam, Villupuram District ...Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN:33324721051/2016-17 dated 20.10.2017 quash the same and pass orders.

For Petitioner : Mrs. R. Hemalatha
For Respondent : Mr. K.Venkatesh GA

O R D E R

Heard Mrs.R.Hemalatha learned counsel for the petitioner and Mr. K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. By consent on either side, the writ petition is taken up for disposal at the admission stage itself.

2.In the light of the glaring error found in the impugned assessment order, this Court does not propose to keep the writ petition pending any longer and is inclined to dispose of the same by this order.

3.The petitioner was issued a notice by the respondent dated 06.06.2017, which was based on an inspection conducted by the Enforcement Wing in the place of business of the petitioner on 19.04.2016 to 26.04.2016 and 17.05.2016. Based on such inspection, the respondent alleged that there is sales suppression (stock difference) and computed the tax payable by the petitioner. There was also a proposal to levy penalty under Section 27(3)(c) of the Tamil Nadu Value Added Tax Act, 2006.

4.The petitioner submitted their explanations on 28.07.2017. In the said explanations, the petitioner set up a defense stating that the manner, in which, the Enforcement Wing Officials recorded their findings is incorrect.

5.Thus, the respondent, being an independent Statutory Authority in the capacity of Assessing Officer of the petitioner, is required to examine the objections filed by the petitioner on merits and in accordance with law. However, the respondent did not do so, but completed the assessment and passed the impugned assessment order solely on the ground that the petitioner has already accepted the omission at the time of inspection. The manner, in which, the petitioner completed the assessment is a clear abdication of the statutory duty cast upon the respondent. Merely because there is a proposal from the Enforcement Wing Officials, that cannot be as a gospel truth to accept as it is and has to consider the objections of the assessee and then take a decision.

6. When similar orders were passed by the Assessing Officer under the Tamil Nadu General Sales Tax Act, 1959, based upon the proposal of the inspection wing in Form D(3), the Hon'ble Division Bench of this Court in the case of Madras Granites (P) Ltd .Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642], held that the Assessing Officer being a quasi judicial officer and exercising quasi judicial functions of completing the assessment, he is not bound by the instructions or directions of the higher authorities. In the said case, it was found that the Assessing Officer had acted on the basis of the direction of the higher authorities and accordingly, the assessment order was quashed. The said decision will apply with full force to the case on hand, as the respondent has done what has been held to be impermissible in Madras Granites (P) Ltd.

7.This Court had an occasion to consider a similar issue in the case of Narasus Roller Flour Mills Vs. CTO [reported in (2015) 81 VST 560], wherein it was held that the Assessing Officer had been solely guided by the proposal of the inspecting officers and there should be independent application of mind and the duties enshrined on the Assessing Officer under the provisions of the said Act were not adhered to and therefore, the impugned assessment orders were set aside.

8.With regard to the levy of penalty, the learned counsel for the petitioner referred to the decision of this Court in the case of Nokia India Private Ltd. Vs. DC(CT)-IV, Large Tax Payers Union, Egmore, Chennai and others [reported in (2015) 79 VST 137] and stated that since the basic ingredients for invoking Section 27(3)(c) of the said Act are lacking in the instant case, the question of levying penalty does not arise.

9.Reliance was also placed on the decision of this Court in the case of M/s.Amutha Metals Vs. CTO, Mannady (East) [reported in (2007) 9 VST 478], wherein the assessment, which was made merely by relying upon the proposal of the Enforcement Wing, was held to be bad in law, as there was no independent application of mind. This decision was followed in the case of V.R.Nachimuthu (CBE) Vs. AC (CT), Erode [W.P.Nos.13384 & 13385 of 2015 dated 30.04.2015].

10.Thus, by applying the above legal principles to the facts of the case, only conclusion that can be arrived at is to hold that the impugned assessment is illegal, devoid of reasons and liable to be set aside.

11.In the result, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioner, peruse the documents and come to an independent conclusion without solely being guided by the report of the Enforcement Wing Officials and complete the assessment in accordance with law. No cots. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

To,

The Commercial Tax Officer (Addl)
Tindivanam, Villupuram District

+1cc to Special Government Pleader(Taxes) in sr.no.83319

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NR 12/12/2017