IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15783 & 15784 of 2007
and M.P.Nos.1 & 1 of 2007

Tvl.Super Recording Co. Ltd.,
rep. by its Managing Director,
713, Anna Salai, Chennai-600 006. ... Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Chennai. ... Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings in TNGST 0640332/2001-02 & CST 33533/2001-02 respectively dated 28.09.2006 and quash the same.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

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C O M M O N O R D E R

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.In these writ petitions, the petitioner has challenged the assessment orders passed by the respondent under the provisions of the Tamil Nadu General Sales Tax Act 1959 (hereinafter referred to as “the TNGST Act”) and Central Sales Tax Act, 1956 (hereinafter referred to as “the CST Act”) for the assessment year 2001-02. The entire proceedings were on account of the search conducted in the place of business of the petitioner as well as in the residential premises. This led to pre-assessment notice being issued for all the three assessment years, alleging that there has been sales suppression and other issues. The records were seized from the petitioner's company and they were packed in bundles and they were numbered by giving an alphabetical code. The petitioner appears to have sought for the relevant details, some of which appears to have been furnished to the petitioner and the petitioner seriously disputed the figures referred to in the pre-assessment notice. After the objections were received, the respondent has completed the assessment by passing the impugned orders.

3.I find that the impugned orders are very lengthy orders, running to almost 11 pages. The assessing officer has referred to each issue and arrived at a finding. However, on certain issues, the assessing officer himself found that the suppression was lesser than what was noted by the enforcement wing officials. By way of illustration, in paragraph 13 of the impugned order in sub-paragraph c(i) under the heading 'sales suppression from the seized records', the assessing officer noted that as per the bundle mark AE, total sales culled out was Rs.6,30,220/- and after taking into account of the transaction that were found accounted for in the accounts during the process by the enforcement wing officials, the net suppression adopted for assessment is only Rs.3,62,426/-. The petitioner’s case is that though the assessing officer was of the view that an independent decision could be taken, still he did not do so, in the light of the report of the enforcement wing, which is consisting of officers, who are superior officers to the assessing officer. Further, it is seen that equal time addition has been made without adducing reasons.

4.The petitioner placed reliance on the decision of the Hon’ble Division Bench of this Court in the case of K.S.Shivji & Co. v. Joint Commercial Tax Officer reported in [1965] 16 STC 769, wherein it was held that assessment proceedings are quasi-judicial in nature and therefore the assessing authority has an independent duty to carefully scrutinise the materials for assessment and satisfy himself thoroughly uninfluenced by any direction of superior officers, and assess the tax payable on that basis. When making an assessment, an assessee ought to be given, both in law and in fairness, reasonable opportunities to look into all the necessary documents and other books so as to enable him to explain and show cause why the proposed turnover ought not to be taken as the basis for assessment.

5.Further, it is seen that penalty has also been imposed and according to the petitioner there was no material to support the allegation of suppression and therefore, the question of levying penalty under Section 12(3)(b) of the TNGST Act does not arise. That apart, it is submitted that the respondent did not take into consideration that the petitioner was enjoying the benefit of the deferral agreement. On a reading of the impugned proceedings, I find that the assessing officer was largely guided by the report of the enforcement wing officers.

6.Thus, considering the facts and circumstances of the case, this Court is of the view that the assessment is required to be re-done in accordance with law. One more reason being that though the writ petition has been pending since 2007, no counter affidavit has been filed by the respondent till date and the petitioner has been enjoying an order of interim stay all these ten years. Thus, to safeguard the interest of the revenue also, the matter is required to be remitted for fresh consideration. However, the Court proposes to impose some conditions to the petitioner. The petitioner is directed to pay 15% of the disputed tax for each of the assessment year within a period of thirty days from the date of receipt of a copy of this order. If such payment is made, the petitioner is entitled to treat the impugned assessment orders as show cause notices and submit their detailed objections to the respondent, who shall consider the same, afford an opportunity of personal hearing to the authorised representative of the petitioner and re-do the assessment in accordance with law. While passing the assessment order if the petitioners have remitted any tax, the same shall be duly reckoned. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Chennai.

+1cc to the Government Pleader, S.R.No. 90001

W.P.Nos.15783 & 15784 of 2007

SR(CO)
TR(10/01/2018)