IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.48159 of 2006 & M.P.No.1 of 2006

Tvl.Alfa Leather Board, rep. by its
Managing Partner, P.S.Abdul Rafi,
95, SIDCO Industrial Estate,
Ranipet, Vellore District. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Ranipet (SIPCOT) Assessment Circle,
Ranipet, Vellore District. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the respondent in TNGST No.4360282/2004-05 dated 19.05.2006 and quash the same as illegal, arbitrary and without authority of law.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.K.Venkatesh,
Government Advocate

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O R D E R

Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent.

2.In this writ petition, the petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") has challenged the assessment order dated 19.05.2006, for the assessment year 2004-05. On a perusal of the impugned assessment order, it is seen that though the petitioner received pre-assessment notice, they have not filed objections, therefore the Revenue would have been justified in confirming the proposal in the revision notice. However, in the instant case, the revision of turnover is based on a case study done by the respondent on the business activities of the petitioner. Based on such case study, the deficit production was arrived by considering the input of raw materials. Apart from that the total current consumption chargers for the period from 01.04.2004 to 26.01.2005 was taken into consideration and deficit production was calculated. This being a higher figure, the same has been adopted. Probably, the case study can be a reason for issuing a revision notice, but that cannot be the sole basis for completing the assessment. Repeatedly, Courts have held that electricity current consumption charges cannot be a basis for revision of turnover.

3.Apart from that, the impugned assessment order has been passed solely guided by the 'D3' report formulated by the Enforcement Wing Officers. Even in the para wise comments furnished by the learned Special Government Pleader by the respondent vide letter dated 02.02.2007, the same stand has been taken stating that the petitioner accepted the suppression before the Enforcement Wing. The Assessing Officer being an independent authority cannot be boundover by a 'D3' proposal. Thus, the impugned assessment order is completely flawed for the above errors.

4.With regard to levy of penalty under Section 23 is concerned, the respondent has levied penalty on the ground of misuse of Form XVII. The petitioner filed an application under Section 55 of the TNGST Act to rectify the assessment order. This has been rejected by order dated 11.10.2006, stating that the machineries were not installed. Hence, the misuse of Form XVII occurred only during the assessment year 2004-05 and levy of tax and penalty under Section 23 of the TNGST Act is in accordance with law. As observed earlier, the respondent could not have solely proceeded based on the 'D3' proposal, as held by the Hon'ble Division of this Court in the case of Madras Granites (P) Ltd. vs. Commercial Tax Officer, Salem and another reported in 2006 (146) STC 642. The Hon'ble Division Bench pointed out that, 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. All the above defects found in the impugned order would be sufficient to set aside the same.

5.Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to file their objections to the revision notice within a period of 30 days from the date of receipt of a copy of this order. After which, the respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law. The 50% of the disputed tax remitted by the petitioner shall abide by the fresh assessment orders to be passed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

abr

To

The Deputy Commercial Tax Officer,
Ranipet (SIPCOT) Assessment Circle,
Ranipet, Vellore District.

Copy to

The Records Keeper,
ER Section,
High Court, Madras.

CO-
Ths : 17.11.2017

` W.P.No.48159 of 2006