IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.02.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.8249 to 8254 of 2017 and
WMP.Nos.9009 to 9014 of 2017

M/s.Ganesa Enterprises ...Petitioner in all WPs.

Vs.

1.The Commercial Tax Officer,
Patravakkam Assessment Circle,
No.127, Yadaval Street, Padi,
Chennai-600 050.

2.The Joint Commissioner (CT),
Enforcement (South), Chennai,
PAPJM Buildings, Greams Road,
Chennai-600 006. ...Respondents in all WPs.

COMMON PRAYER:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in TIN/33811366102/2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 dated 04.08.2016, quash the same and further direct the first respondent to re-do the assessment without being influenced by the directions issued by the unauthorized VAT AUDIT (conducted without any authorization by Special Commissioner as mandated under Section 64(4) of the Tamil Nadu Value Added Tax Act,2006) report dated 29.09.2015.

For Petitioner in all WPs. : Mr.V.Sundareswaran
For Respondents in all WPs. : M/s.G.Dhanamadhri, GA

ORDER

Heard Mr.V.Sundareswaran, learned counsel for petitioner and Mrs.G.Dhanamadhri , learned Government Advocate for the respondents.

2. In these writ petitions, the petitioner has challenged the assessment orders under the provision of Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15. The petitioner also seeks for a consequential direction to direct the 1st respondent to re-do the assessment without being influenced by the observations done by the VAT audit, as the same is without jurisdiction for want of proper authorisation as required under Section 64 (4) of the TNVAT Act. It is seen that pursuant to the VAT Audit conducted in the business premises of the petitioner, seventeen (17) issues were pointed. Out of which, the tax demanded in respect of nine issues were settled by the petitioner even during the audit. The petitioner contested that the liability occurred on account of mismatch between annexure 1 and 2 for the assessment years 2009-2010 to 2014-15. Apart from that, the petitioner also resisted the allegation of purchase suppression for two years namely 2012-13 and 2014-15.

3. I find from the statement recorded by the Audit Department from the petitioner, the petitioner has raised certain objection with regard to the allegation of mismatch and purchase suppression. Pursuant to the VAT Audit, show cause notice was issued on 31.05.2016, for all the assessment years and the show cause notice pertaining to the matters which were not accepted by the petitioner during the course of VAT Audit. Unfortunately, the petitioner did not submit a proper reply to the show cause notice and submitted that they paid all the Taxes at the time of inspection and requested the respondent to accept their letter dated 22.07.2016 and process the assessment orders. The respondent could have afforded an opportunity of personal hearing to the petitioner especially when the revision of assessment was proposed under Section 22 (4) of the TNVAT Act. Since the objections were not proper, the respondents confirmed the proposal in the notice and completed the assessments by passing the impugned order. The respondent cannot be faulted for having passed the impugned assessment order in the manner done, since the petitioner did not give proper objections to the show cause notice. However considering the fact that the portion of the liability was cleared by the petitioner themselves at the time of inspection and they were not properly advised as to the manner in which they have to respond to the show cause notice, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer.

4. Accordingly, the petitioner is directed to treat the impugned assessment orders as show cause notices and submit their objections to the same within a period of 15 days from the date of receipt of a copy of this order. If any details are required, the petitioner can submit their interim objections and request for details to be furnished and on receipt of those

details (if required), the petitioner can submit further objections and after receiving the same, the respondents shall afford an opportunity of personal hearing and re-do the assessment in accordance with law.

5. With the above observation, the writ petitions is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sk/sai

To

1.The Commercial Tax Officer,
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No.127, Yadaval Street, Padi,
Chennai-600 050.

2.The Joint Commissioner (CT),
Enforcement (South), Chennai,
PAPJM Buildings, Greams Road,
Chennai-600 006.

+ 1 cc to Mr.V.Sundareswaran Advocate,SR.9452

+ 1 cc to The Special Govt.Pleader(Taxes), SR.10380

W.P.Nos.8249 to 8254 of 2017

nr 27/02/2018