IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9791 to 9798 of 2018

M/s.Tecno Doors Private Ltd.,
Rep. by its Director,
Plot No.L1, SIPCOT Industrial Park,
Mambakkam, Pondur Village,
Sriperumbudur Taluk, Kancheepuram,
Tamil Nadu-602 106. ... Petitioner in all the Petitions

Vs.

1.The Commercial Tax Officer,
Office of the Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,
Varadarajapuram-602 103.

2.The Enforcement Officer/Commercial Tax Officer,
Office of the Deputy Commissioner (CT),
Enforcement (East), PAPJM Building,
Greams Road, Chennai-600 006. ... Respondents in all the petitions

Prayer in WP.Nos.9791 & 9792 of 2018:-

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the first respondent to act independently by exercising his adjudicatory powers by following the principles in place based on precedents from the Hon'ble Supreme Court, Hon'ble Jurisdictional High Court and the Hon'ble other High Courts.

Prayer in WP.Nos.9793 to 9798 of 2018:-

Petition filed under Article 226 of the constitution of India, praying this court for the issuance of writ of certiorarified mandamus, Calling for the records of the 1st respondent in

(i) TIN.33781663455 / 2014-15 & CST.889617 / 2014-15 dated 25.01.2018 (in WP.No.9793/2018)

(ii) TIN.33781663455 / 2013-14 & CST.889617 / 2013-14 dated 25.01.2018 (in WP.No.9794/2018)

(iii)TIN.33781663455 / 2012-13 & CST.889617 / 2012-13 dated 25.01.2018 (in WP.No.9795/2018)

(iv) TIN.33781663455 / 2011-12 & CST.889617 / 2011-12 dated 25.01.2018 (in WP.No.9796/2018)

(v) TIN.33781663455 / 2010-11 & CST.889617 / 2010-11 dated 25.01.2018 ((in WP.No.9797/2018)

(vi) TIN.33781663455 / 2009-10 & CST.889617 / 2009-10 dated 25.01.2018 (in WP.No.9798/2018) respectively

quasht the re-assessment notices and consequently direct the respondent 1 to not proceed with the Re-assessment notices which have attained finality

For Petitioner : Mr.K.Senguttuvan
(in all W.Ps.)

For Respondents : Mr.M.Hariharan,
(in all W.Ps.) Additional Government Pleader

C O M M O N O R D E R

Heard Mr.K.Senguttuvan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader (Taxes) accepting notice on behalf of the respondents. With consent on either side, these writ petitions are taken up for final disposal.

2. The petitioner is a Company registered under the Companies Act, 1956 engaged in the manufacture and sale of doors predominantly used in lifts. The petitioner is registered on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956.

3. In these writ petitions, the petitioner seeks for a direction upon the first respondent to act independently by exercising his adjudicatory powers by following the principles in place based on precedents of the Hon'ble Supreme Court and

this Court and other Hon'ble High Courts. The reason for approaching this Court for such a relief is on account of the fact that the first respondent issued revision notice dated 25.01.2018. The notice was consequent upon an inspection conducted by the Enforcement Wing officials in the business premises of the petitioner and a VAT Audit on 10.03.2017.

4. By way of illustration, the notice issued for the assessment year 2009-10 is seen in which it is stated that on verification of interstate sale bills, it was found by the enforcement officials that the tax invoices mentioned "Your Own Means" as against the column of transporter, which means the purchasing dealers, who are in the other State came to Tamil Nadu and taken delivery personally from the registered place. Therefore, the first respondent stated that the sales were completed within Tamil Nadu and the sales are only local sales and not interstate sales. Further, the other State addresses shown in the sale invoices are not sufficient to prove that the sales are interstate sales and therefore called upon the petitioner to produce documents such as lorry receipts, check post documents, etc., to prove that the goods have actually moved to other State and the sale is interstate sale. The first respondent further stated that upon failure to produce those documents, the sales will be treated as local sales and tax will be levied at the rate of 14.5%.

5. The petitioner's apprehension is that in spite of giving a detailed reply to the enforcement officials explaining that the stand taken by them is wholly incorrect, the first respondent has mechanically issued the impugned notices. Further, it is mentioned that the revision notice does not even state under which provision of law, the reassessment is sought to be made.

6. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of Sakthi Masala (P) Ltd., v. The Assistant Commissioner (CT) reported in 2013 (5) TMI 699, in support of his contention that reassessment notice issued merely on the ground of defects noticed by the audit officials and not under any section stipulated under the TNVAT Act was illegal.

7. To support the stand that sales are interstate sales, reliance was placed on the decision of this Court in the case of WS Retail Services Private Limited v. Union of India and others reported in (2017) 9 VST - OL 19 (Mad.) and it is submitted that

concluded sale takes place in the States, where goods are sent, which must be different from the State from which the goods moved. Similarly, reliance was placed on the decision of the Hon'ble Supreme Court in the case of State of Orissa and another v. K.B.Saha and Sons Industries Pvt. Ltd. And others reported in (2007) 7 VST 214 (SC).

8. In order to demonstrate that sales are interstate sales, the learned counsel by relying upon the decision of the Hon'ble Supreme Court in Balabhagas Hulaschand vs. State of Orissa reported in (1976) 37 STC 207 (SC), submitted that the conditions laid down by the Hon'ble Supreme Court in the said decision are fully fulfilled in the transaction done by the petitioner. Further, by referring to the nature of transaction done by the petitioner, it is submitted that almost all the supplies are supported by Form C issued by the recipient. The petitioner apprehends that the first respondent would mechanically followed the instructions given by the second respondent and even if a reply is given to the revision notice, the same will not result in any proper consideration of the submissions of the petitioner.

9. In my considered view, the matter is yet to be concluded and assessment proceedings are yet to commence. Though it may be true that revision of assessments have occurred earlier, as and when Form C declarations are filed, the first respondent is bound to take note of the same and if the forms are found to be in order, he should revise the assessment. Though the revision notices are consequent upon a VAT Audit conducted in the business premises of the petitioner, that by itself will not be a reason for not submitting objection to the notice. The petitioner need not have any apprehension that the first respondent would mechanically deal with the matter and if he does so, he will be violating the law laid down by this Court in several decisions. The first respondent should bear in mind that as an assessing officer he is an independent statutory authority conferred with the power of assessment. The assessing officer should not bound by the directions issued by the enforcement officers, though they may be superior officers and the assessing officer has to independently consider the objections filed by the petitioner to the revision notice, peruse the documents placed by the petitioner and examine the transaction in an unbiased manner and then, come to a conclusion. The VAT Audit conducted by the second respondent in the business premises of the petitioner and the notings made by them can at best be only a starting point for issuance of a revision notice. Therefore, if the assessing officer, comes to a conclusion solely based upon the report of the enforcement

wing, such order has to be termed to be illegal order and deserves to be set aside forthwith. The assessing officer should bear in mind the above legal principle, when he proceeds with the assessment.

10. With these observations, these writ petitions are disposed of by directing the petitioner to submit comprehensive reply to all the revision notices received by them within a period of 15 days' from the date of receipt of a copy of this order. On receipt of the reply, the first respondent should afford an opportunity of personal hearing and independently consider the reply given by the petitioner to the revision notices without in any manner being influenced by any observation made by the enforcement officer and proceed to complete the assessment by passing a reasoned order on merits and in accordance with law. It is open to the petitioner to place the relevant decisions in support of their claim, which shall also be taken into consideration by the assessing officer. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Commercial Tax Officer,
   Office of the Assistant Commissioner (CT),
   Sriperumbudur Assessment Circle,
   Varadarajapuram-602 103.

2. The Enforcement Officer/Commercial Tax Officer,
   Office of the Deputy Commissioner (CT),
   Enforcement (East), PAPJM Building,
   Greams Road, Chennai-600 006.

+1cc to Mr.K.Senguttuvan, Advocate, S.R.No.30425
+1cc to the Special Government Pleader, S.R.No.30077

W.P.Nos.9791 to 9798 of 2018

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cs/17/05/18