IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.6915 & 6916 of 2018 &
W.M.P. Nos.8559 & 8560 of 2018

Tvl.B.H.S. Hydraulic
Rep. by its Partner
B.Sharmila Banu
No.21/1-3, Palani Andavar Koil Thottam
Seetharampalayam Post
Tiruchengode-637 211 ...Petitioner in both WPs

Vs.

The State Tax Officer
Tiruchengode Town Circle
Tiruchengode ...Respondent in both WPs

W.P.No.6915/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, Calling for the records on the files of the respondent in TIN: 33553185269/2014-2015, dated 31.1.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

W.P.No.6916/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, Calling for the records on the files of the respondent in TIN: 33553185269/2015-2016, dated 31.1.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

For Petitioner : Mr.R.Senniappan
For Respondents : Ms.G.Dhanamadhri
Government Advocate (T)

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate (T) for the respondent.

2. The petitioner in these above writ petitions has challenged the assessment orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment years 2014-15 and 2015-2016.

3. On a reading of the impugned assessment orders, it is seen that the respondent has extracted the representation given by the petitioner in the revision notice but, has been carried away by the reports submitted by the Inspecting Official. However, the respondent should have noted that the Proprietor of the petitioner, who is presently no more, before the Inspecting official, objected to the proposals/defects. This has also been specifically pointed out in the petitioner's objections stating that they have disputed the tax amount of Rs.8,74,775/- as determined by the Inspecting Official, who have collected post-dated cheques. The petitioner approached the court and obtained an order of return of the cheques and the Assessing Officer was directed to complete the assessment. However, I find that the Assessing Officer though wanted to take independent decision in the matter, appears to have been precluded from doing so because of the Inspection Report.

4. It is settled legal position that the Assessing Officer is an independent statutory authority and he is not bound by any directions issued by the superior authority and has to complete the assessment independently after taking note of the objections. In this regard, it is beneficial to refer to the decision of the Hon'ble Division Bench Madras in the case of Madras Granites (P) Ltd Vs Commercial Tax Officer Arisipalayam Circle reported in 146 STC 642.

5. Thus, for the above reason, this court is of the view that the matter requires to be remanded to the respondent for fresh consideration.

6. Accordingly, the writ petitions are allowed and the impugned orders are set side and the matters are remitted back to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law, by independently applying his mind and without being in any manner influenced by the observations made by the Inspecting Official, within a period of thirty days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

Rj

To

The State Tax Officer
Tiruchengode Town Circle
Tiruchengode

+1 CC to Mr.R. Senniappan, advocate sr 28360.
+1 CC to Govt. Pleader sr 28538.

NRL(CO)
SP(27/04/2018)