IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.9467 to 9477 of 2015
W.M.P. Nos.1,1,1,1,1,1,1,1,1,1 & 1 of 2015

W.P.No.9467 of 2015

M/s.Ben Foundation Pvt. Ltd.,
Represented by its Managing Director,
No.1, South Park Road,
Anna Nagar West,
Chennai 600 040 ... Petitioner in all

Vs

1.The Deputy Commissioner (SMR),
Office of the Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

2.The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai 600 107. ... Respondents in all

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari to call for the records of the first respondent with reference to the surprise inspection conducted at the petitioner's premises between 12.01.2015 to 20.01.2015 and quash the sworn statement dated 20.01.2015 as recorded by 1st respondent.

Writ Petition No.9468 of 2015: Writ petition filed under Article 226 of the constitution of India praying to issue a writ of certiorari or any other appropriate writ, direction or order calling for the records of the second respondent in his proceedings in RC.394/ 2015/A4 TNGST 2002-2003 and quash the Notice dated 11.3.2015 issued therein;

Writ Petition No.9469/15 is filed under Article 226 of the constitution of India praying to issue a writ of certiorari calling for the records of the 2nd respondent inhis proceedings in RC.394/2015/A4 TNGST;2003-04 and quash the notice dated 11.03.2015 issued therein;

Writ Petition Nos.9470 to 9477 of 2015: Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari calling for the records of the second respondent in his proceedings in TIN:33891350424/TNGST/2004-05; TIN.33891350424/TNGST/VAT/2006-07; TIN.33891350424/2007-08; TIN.33891350424/2008-09; TIN.33891350424/2009-10; TIN.33891350424/2013-14; TIN.33891350424/2012-13 and TIN.33891350424/2014-15 respectively and quash the notice dated 12.03.2015 issued therein

For Petitioner :: Mr.R.L.Ramani
Senior counsel
for Mr. B.Raveendran
[for all WPs]

For Respondents:: Ms.G.Dhanamadhri
Government Advocate
[for all WPs]

COMMON ORDER

Heard, Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioners and Ms.G.Dhana Madhri, learned Government Advocate (Taxes) appearing on behalf of the respondents.

2.The writ petitions have been taken up for disposal as counter affidavit has been filed and the counsels have made their submissions.

3.The petitioner has impugned the notices issued by the respondents dated 12.03.2015 for the assessment years 2002-2003 to 2009-2010, 2012-2013 to 2014-2015 (except 2010-2011 and 2011-2012). The first respondent, who is holding the post of Deputy Commissioner of Commercial Taxes, suo motu exercised his revisional power and inspected the place of business of the petitioner from 12.01.2015 to 20.01.2015. In the said inspection, a statement was recorded from the Managing Director of the petitioner with regard to the findings /discrepancies during the course of inspection.

4.It is stated that the Inspecting Officer more than Rs.1 crore was collected as tax. Pursuant thereto, the first respondent issued notice to the petitioner dated 27.01.2015 by referring to the statement given by the Managing Director stating that he would give reply on the "findings on inspection", after consultation with the consultant. But, no reply has been received which the dealer was requested to file on or before 02.02.2015 failing which appropriate action will be taken under the provisions of Tamil Nadu Value Added Tax Act and Tamil Nadu General Sales Tax Act. The petitioners submitted a representation to the first respondent dated 02.02.2015 requesting for grant of one month time after they received the xerox copy of the records seized and recovered from the petitioner. After which the petitioners submitted a reply on 02.03.2015 covering all the issues which were questioned to the Managing Director during the inspection. Subsequently,the first respondent did not initiate any action nor the petitioner was put on notice of any order or observation made by the first respondent, but the second respondent, the petitioner's Assessing Officer, issued the impugned notices by referring to a surprise inspection dated 12.02.2015 proposing to revise the turnover for all the assessment years as referred supra.

5.So far as the assessment years 2002-03, 2003-04, 2004-05, and 2006-07 [01.04.2006 to 31.12.2006], are concerned it was under the erstwhile Tamil Nadu General Sales Tax Act, which has been repealed. Therefore, it is the contention of the petitioner that such assessment cannot be re-opened based upon the inspection conducted by the officers based upon repealed Act by exercising power under the TNVAT Act.

6.Further more, it is submitted that when the Superior Officer namely, first respondent having called for an explanation from the petitioner as regards the findings on inspection, no useful purpose would be served the second respondent, their Assessing Officer, with regard to the jurisdiction of the authority to reopen assessment completed under the TNGST Act. Though it has been specifically raised by the petitioner in the representation, in the counter affidavit there is a vague denial stating that the notices issued are in accordance with section 88 (1) of the TNVAT Act.

7.It is pointed out by the learned Senior Counsel for the petitioner that the said provision Section 88(1) would save only anything which was done or any action taken under the Repealed TNGST Act and the same cannot be reopened based on the inspection, which is conducted after the TNGST Act was repealed.

8.In my view, the petitioner need not have any apprehension to go before the Assessing Officer and submit their defense. This is so because the law mandates that the Assessing Officer being an independent authority has to exercise his statutory power uninfluenced by any observation or direction that may be issued by the superior officer. No Superior Officer can compel him to do the assessment in a particular manner. This is why he has been termed as independent authority under the provisions of the Act.

9.That apart, though a statement has been recorded from the petitioner and the respondent called for the reply on the findings of the inspection which the petitioner has also submitted no order has been passed by the first respondent and the first respondent is very well know that he is not the assessing officer of the petitioner for reversing credit availed by the petitioner.

10.Therefore, at best, the statement or findings of the inspecting officer can be a starting point for issuing a revision notice and nothing more. As and when the petitioner submitted an explanation to the impugned notices, the second respondent should have considered the same independently uninfluenced by any of the observation made the Enforcement Officer and if there is any trace or tinge to show that the Assessing Officer has acted as a mouthpiece of the Enforcement Officer that they will be officer, that will be sufficient to hold that the above are illegal. The above said principles should borne in mind by the Assessing Officer while dealing with the assessment.

11.In the light of the above, the writ petitions are disposed of by directing the petitioners to submit their objection to the impugned notices within a period of 15 days from the date of receipt of a copy of this order, after which, the second respondent shall fix a date for personal hearing and afford an opportunity to the petitioner and decide and complete the assessment and uninfluenced by any of the observation made by the Enforcement Officer and take an independent decision in the matter. The second respondent should decide the legal issue raised by the petitioner with regard to the proposed re-assessment, which were completed when the TNGST Act was in force. Needless to state that the petitioners seek for copies of records which were seized which they have to furnish. If the records are voluminous the petitioner should be granted sufficient time for perusal of those records in the presence of the officers.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

maya/sai

To

1.The Deputy Commissioner (SMR),
Office of the Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

2.The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Chennai 600 107.

+ 1 cc to MR. B. Raveendran, Advocate Sr.1342
+ 1 cc to Mr.Special Government Pleader Sr.1675

W.P.Nos.9467 to 9477 of 2015

RV(CO)
EU(28/02/2018)