IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.7.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.16580 TO 16584 OF 2018 &
WMP.NOS.19752 TO 19756 OF 2018

M/s.CIPLA Limited, rep.by
Mr.S.M.Ananthasayanam,
Authorized Signatory ...Petitioner in all WPs.

Vs

The Assistant Commissioner (CT),
Porur Assessment Circle, 65/1,
Kundrathur Main Road,
Madanandapuram, Chennai-125. ...Respondent in all WPs.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent respectively in TIN:33691386036/2011-12, TIN:33691386036/ 2012-13, TIN:33691386036/2013-14 and TIN:33691386036/2014-15, all dated 12.9.2016 and the connected notices, all dated 18.5.2018 (WP.Nos. 16580 to 16583 of 2018) and to call for the records on the files of the respondent in TIN: 33691386036/2015-16 dated 17.5.2018 (WP.No.16584 of 2018) and quash the same as being issued with a premeditated mind, without jurisdiction and violation of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. In the light of the fact that this is a clear case of abuse of jurisdiction on the part of the respondent and arbitrariness in exercise of powers, the writ petitions are taken up for joint disposal.

2. The petitioner is a limited company engaged in the business of manufacturing of pharmaceutical drugs and medicines. An inspection was conducted in the place of business of the petitioner between 13.4.2016 and 23.4.2016, based on which, a statement was recorded on 26.4.2016 from the authorized representative of the petitioner. Pursuant to that, the respondent issued revision notices dated 12.9.2016 for the assessment years from 2011-12 to 2014-15.

3. The entire proposal to revise the turnover for the relevant assessment years was on account of the details culled out from the official website of the Department namely Annexure II of the selling dealers. The further allegation was that those transactions were not reflected in the returns filed by the petitioner and that therefore, the respondent alleged that there is a non disclosure of the purchase turnover.

4. On receipt of the revision notices dated 12.9.2016 for the years from 2011-12 to 2014-15, the petitioner sought additional time to submit their reply through their representation dated 29.9.2016, after which, the petitioner sent separate reply dated 24.10.2016 for all the four assessment years. Nothing happened thereafter. But, the respondent chose to issue the notices dated 11.10.2017 for the assessment years from 2011-12 to 2014-15 for want of certain records, for which also, the petitioner sent their reply dated 16.10.2017. Subsequently, a separate revision notice dated 17.5.2018 has been issued for the assessment year 2015-16 and before-ever the petitioner company could contemplate as to what is to be done, another set of notices dated 18.5.2018 came to be issued for the assessment years from 2011-12 to 2014-15. The petitioner has impugned the notices dated 12.9.2016, 17.5.2018 and 18.5.2018 on several grounds.

5. The learned counsel for the petitioner, by way of illustration, has referred to the web report for the assessment year 2011-12 and pointed out that in majority of the transactions, the name of the dealer has not been given and the invoice number and other details are blank and based on such incomplete details, the respondent proposed to revise the assessments.

6. It is further pointed out by the learned counsel for the petitioner that in the impugned notices dated 18.5.2018 for the assessment years from 2011-12 to 2014-15, the respondent admitted that he had sent a deviation proposal to his superior officer. However, it was rejected. The reasons for such rejection having not been disclosed, the respondent stated that he is proceeding to issue the impugned notices dated 18.5.2018 for the assessment years from 2011-12 to 2014-15.

7. Time and again, this Court has always stressed the point that the Assessing Officer is an independent authority and he cannot be directed to complete the assessment in a particular manner. Thus, if a superior officer directs the Assessing Officer to complete the assessment in the manner he proposes, then the purpose of creating an Assessing Officer and a procedure for assessment would be reduced to a mockery. In the instant case, it is clear that the Assessing Officer has been compelled by his superior officer namely the Joint Commissioner (ST), Enforcement II, Chennai-6.

8. Apart from that, issuing repeated notices and calling upon the petitioner to submit their reply would amount to harassing a dealer and no useful purpose will be served in submitting a reply to the notices dated 18.5.2018, as already the respondent pre-judged the issue because he stated that the deviation proposal sent by him was rejected by his superior officer.

9. So far as the manner, in which, the assessments have to be completed, in cases where the details are culled out from the official website of the Department, since the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Rules framed thereunder did not stipulate specific guidelines nor the Commissioner had issued directives, several writ petitions came up before this Court challenging such revision of assessment based on web report details and this Court, in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], having noted that at times arbitrary exercise of power has been done without conducting an enquiry and also that in the absence of any procedure prescribed under the Statute or by any statutory instructions, ultimately held that this Court has to step in to frame certain guidelines as to how such assessments have to be done.

10. In the instant case, the respondent disregarded the direction issued in the said decision, which, admittedly, holds the field as on date, since no appeal is filed, though a review application has been filed by the Revenue. Thus, considering the facts and circumstances of the case, this Court is of the view that the impugned notices dated 18.5.2018 for the assessment years from 2011-12 to 2014-15 and the impugned notice dated 17.5.2018 for the assessment year 2015-16 cannot be allowed to proceed.

11. The learned counsel for the petitioner submits that all the records are available with the petitioner and had a proper consideration been given to their objections dated 16.10.2017, the question of issuing the third set of notices would not arise. It is further submitted that from the wordings in the impugned notices dated 18.5.2018 issued for the assessment years from 2011-12 to 2014-15, it is clear that the respondent was convinced with the explanation offered.

12. However, the Assessing Officer was bound over and prevented from exercising his statutory power by the direction issued by his superior officer and the direction issued to the respondent to complete the assessment in a particular manner is strictly in conflict with the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites Private Limited Vs. CTO, Arisipalayam Assessment Circle, Salem [reported in (2006) 146 STC 642]. Therefore, even assuming that any such direction is given, it is not binding on the Assessing Officer and he is required to decide the issue uninfluenced by any such direction based on the documents produced by the dealer.

13. For all the above reasons, the writ petitions are partly allowed and the impugned notices dated 18.5.2018 for the assessment years from 2011-12 to 2014-15 and the impugned notice dated 17.5.2018 for the assessment year 2015-16 are quashed. The matters are remanded to the respondent for a fresh consideration. The respondent is directed to afford an opportunity of personal hearing, during which, the petitioner shall be given an opportunity to submit additional representation and after affording an opportunity of personal hearing, the respondent shall scrupulously consider all the documents that the petitioner may produce, their objections dated 24.10.2016 and 16.10.2017 and also fresh objections that the petitioner may submit during the course of personal hearing and take an independent decision in the matter without in any manner being influenced by the report of the officials of the Enforcement Wing or his superiors or the observations made in the proceedings rejecting his deviation proposal. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Porur Assessment Circle, 65/1,
Kundrathur Main Road,
Madanandapuram, Chennai-125.

+1cc to Mr.C.Venkat Raman, Advocate, S.R.No.42941
+1cc to the Special Government Pleader(T), S.R.No.43700

WP.Nos.16580 to 16584 of 2018&
WMP.Nos.19752 to 19756 of 2018

SR(CO)
CS/20/07/18