In the High Court of Judicature at Madras

Dated : 18.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.18198 to 18203 of 2018 &
WMP.Nos.21507 to 21512 of 2018

M/s.White House, rep.by its
Partner M.Mohamed Yunus ...Petitioner in all the Petitions

Vs

The Assistant Commissioner (CT),
Vepery Assessment Circle, No.10,
Greams Road, Palaniappa Maligai,
Chennai-6. ...Respondent in all the Petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the respondent respectively in TIN: 33160520457/2008-09, TIN: 33160520457/ 2009-10, TIN: 33160520457/2010-11, TIN: 33160520457/2011-12, TIN: 33160520457/2012-13 and TIN: 33160520457/2013-14, all dated 20.6.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.S.Kanmani Annamalai
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In the light of the glaring errors, which are apparent on the face of the impugned orders, the writ petitions are taken up for joint disposal even at the admission stage.

2. The petitioner is aggrieved by the assessment orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years from 2008-09 to 2013-14.

3. It may not be necessary for this Court to go into the factual aspects as regards the merits of assessments, which are not normally done in a writ petition. The reason for entertaining these writ petitions and disposing of the same at the admission stage is on account of the fact that the Assessing Officer was not permitted to act independently by the Joint Commissioner (ST), Enforcement I, Chennai-6.

4. On receipt of the report of Assistant Commissioner (CT), Enforcement-I, Chennai-6 dated 31.7.2014, the respondent promptly issued the notices dated 16.9.2015. The dealer filed the copies of records on 30.9.2015. On perusal of the same, the respondent found that the stand taken by the assessee is acceptable and she sent a deviation proposal. However, the Joint Commissioner (ST), Enforcement-I, Chennai-6 vide proceedings dated 13.2.2018 rejected the deviation proposal and directed the respondent to implement the directions issued by the Enforcement Wing. Thus, left with no other option, the respondent abdicated her powers as an Assessing Officer and blindly followed the instructions of her superior officer namely the Joint Commissioner.

5. Time and again, this Court has been holding that the Assessing Officer is an independent Authority and no superior can dictate terms as to the manner, in which, the Assessing Officer has to complete the assessment. Earliest of the decisions on this point is the decision of the Hon'ble Division Bench in the case of Madras Granites Vs. CTO [reported in (2006) 146 STC 642] wherein the Hon'ble Division Bench held as follows :

> "Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the Assessing Officer to complete the assessment on the basis of the proposal in D-3 form, we find that the Assessing Officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the Assessing Officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. It is well-settled that the Assessing Officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher

authority in completing the assessments. We hold that the assessments are not sustainable in law."

6. A similar view was taken by this Court in the case of Amutha Metals Vs. CTO, Mannady East Assessment Circle [reported in (2007) 9 VST 478] wherein it has been held thus :

> "The objections had to be considered by the Assessing Officer on their own merits. The assessment orders had been passed without considering the objections and by taking note of the proposal of the Enforcement Officers. Therefore, the orders of assessment had to be set aside and the Assessing Officer was directed to consider each one of the objections raised by the petitioners and give reasons."

7. This Court, in the case of Cipla Limited Vs. AC (CT), Porur Assessment Circle [W.P.Nos.16580 to 16584 of 2018 dated 04.7.2018], tested the correctness of some what similar assessment orders, which were passed by the Assessing Officer solely based upon the directions issued by a superior officer. This Court set aside those assessment orders holding as follows :

> "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."

8. The above referred to decisions have been quoted in this order in order to strengthen the hands of the Assessing Officer and to remind her that she is an independent officer, that no direction from a superior officer is binding on the Assessing Officers and that she is required to decide the case based on the reply filed by the dealer and the documents that may be produced. Therefore, the respondent should not be bound over by

any direction issued by the Joint Commissioner and should be allowed to take a decision independently in the matter.

9. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent is directed to afford an opportunity of personal hearing, consider the objections filed by the dealer and if any records are required from the dealer, direct the dealer to produce the same, give an effective opportunity to the dealer and redo the assessments in accordance with law with an independent mind without, in any manner, being influenced by the directions issued by either the Joint Commissioner or the Deputy Commissioner or any of her superiors. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Vepery Assessment Circle, No.10,
Greams Road,
Palaniappa Maligai,
Chennai-6.

+1cc to Mr.S.Kanmani Annamalai, Advocate, S.R.No.47350.
+1cc to the Special Government Pleader(Taxes), S.R.No.48135.

WP.Nos.18198 to 18203 of 2018&
WMP.Nos.21507 to 20512 of 2018

PA(CO)
BM 03/08/2018