IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.6.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.1881 to 1883 of 2018
& WMP.Nos.2337 to 2339 of 2018

Avigna Properties Private Ltd.,
rep.by its Managing Director
Mr.S.Rajasekaran Plot No.1822,
1 Block, 13th Main Road,
Anna Nagar West, Chennai-40 ..Petitioner in all WPs.

Vs

1.The Assistant Commissioner (ST),
Aminjikarai Assessment Circle,
No.50, I Avenue, Anna Nagar
East, Chennai-102.

2.The Joint Commissioner (ST),
Chennai Central Division, PAPJM
Buildings, IV Floor, Greams Road,
Chennai-6. ..Respondents in all WPs.

Prayer: PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the case from the file of the first respondent TIN/33091026884/2013-14, TIN/33091026884/2014-15 and TIN/33091026884/2015-16, all dated 29.12.2017 for the assessment years 2013-14, 2014-15 and 2015-16, quash the same direct the first respondent to consider the materials produced along with the objections and follow the order of the second respondent in RC.No. 6521/2017/B7 dated 27.12.2017.

For Petitioner : R. Venkataram Senior Counsel
for Mrs.Lakshmi Sriram inall WPs.

For Respondents: Mrs.G.Dhana Madhri,
GA(Taxes) in all WPs.

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for joint disposal.

2. This Court has carefully considered the submissions made by the learned counsel on either side and perused the material papers as well as the written instructions given to the learned Special Government Pleader vide letter dated 14.2.2018.

3. Though several grounds were raised by the petitioner challenging the impugned assessment orders, the first and foremost ground raised by the petitioner is that the Assessing Officer of the petitioner - the first respondent herein was a part of the Enforcement Wing, which visited the business premises of the petitioner from 26.4.2016 to 29.4.2016 and also on 04.5.2016, which has been the cause of action for issuing the revision notices dated 23.9.2017.

4. Therefore, it is the submission of the learned counsel for the petitioner that the Assessing Officer namely the first respondent herein, being a part of the Enforcement Wing, which visited the business premises of the petitioner, cannot act as an Assessing Officer, as he would be a judge of his own cause. The learned counsel for the petitioner would submit that in spite of the directions issued by the second respondent to the first respondent vide communication dated 27.12.2017, the excess amount of tax deducted at source has not been adjusted/refunded.

5. In the written instructions given to the learned Special Government Pleader, the first respondent would state that he did not take any decision subsequent to the inspection and that he was only a part of the Inspecting Team to assist. With regard to the compliance of the direction issued by the second respondent vide communication dated 27.12.2017, the first respondent took a stand that such exercise can be completed only after the assessment is finalized for the year 2017-18 and after issuance of Form P notice read with Rule 8(6) of the Tamil Nadu Value Added Tax Rules, 2007.

6. So far as the first contention is concerned, it is submitted that the first respondent was a part of the Inspecting Team. The report of the Inspecting Team has been the basis for revision of assessments. Even though the first respondent stated that he had not taken any decision in the matter, nevertheless, he was a part of the Inspecting Team. Therefore, it will not augur well for the first respondent to act upon the report submitted by the Enforcement Wing, in which, he was a party.

7. The settled principle is that justice must not only be done, but must appear to be done. The other settled legal principle is that no man can be a judge of his own cause. Thus, the first respondent should have recused himself in taking a decision in the instant case, as he formed part of the Enforcement Team, which visited the business premises of the petitioner. Therefore, this Court is of the view that the assessments should be redone by a different officer.

8. With regard to the second issue namely regarding adjustment/ refund of the tax deducted at source, the second respondent issued directions and if the first respondent has any reservations with regard to those directions, it is for the first respondent to address his superior officer and get appropriate clarification and shall not refuse to implement the directions. In the hierarchy of officers, the second respondent, being a superior officer, is entitled to issue directions to Assessing Officers. Even if there is any factual inconsistency, the Assessing Officer shall approach his superior officer and give an explanation. Without doing so, the stand taken by the first respondent in the written instructions dated 14.2.2018 is not appreciable.

9. For the above reasons, the writ petitions are allowed, the impugned orders are set aside and the second respondent is directed to place the entire files before some other officer, who shall issue fresh notices to the petitioner, afford an opportunity of personal hearing and redo the assessments in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Assistant Commissioner (ST),
Aminjikarai Assessment Circle, No.50,
I Avenue, Anna Nagar East, Chennai-102.

2.The Joint Commissioner (ST),
Chennai Central Division,
PAPJM Buildings,
IV Floor, Greams Road, Chennai-6.

+ 3 ccs to M/s. Lakshmi Sriram, Advocate Sr.41770
+ 1 cc to MR. the Special Government Pleader Sr.42433

WP.Nos.1881 to 1883 of 2018&
WMP.Nos.2337 to 2339 of 2018

SSV(CO)
EU(13/07/2018)