IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.27881 of 2018
and
W.M.P.Nos.32431 & 32441 of 2018

M/s.Vinayaga Pipe Industries
Rep. By its Partner-P.Sivaanandam,
Navalpakkam Village,
Cheyyar Taluk,
Tiruvannamalai District. ..Petitioner

Vs.

The State Tax Officer,
Vandavasi,
Tiruvannamalai District. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33964602327/2016-17 dated 31.08.2018 as illegal and contrary to the provisions of the act and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 31.08.2018 passed in respect of the assessment year 2016-17.

3. It is contended on behalf of the petitioner that the Assessing Officer has chosen to pass the order of assessment by confirming the proposal solely based on the report filed by the Enforcement Wing Officer without applying his independent mind and giving any finding on the objections raised by the

petitioner to the notice of proposal. Therefore, it is contended that the Assessing Officer is not justified in passing the impugned order of assessment in the absence of any independent reasoning and finding. It is further contended that the Assessing Officer has not given personal hearing to the petitioner, especially, when he has chosen to levy penalty under section 27(4) of TNVAT Act.

4. On the other hand, the learned Government Advocate would contend that the Assessing Officer has passed the order of assessment after giving due opportunity of hearing to the petitioner and therefore, this Court need not interfere with the same.

5. Heard both sides and perused the impugned order of assessment.

6. Perusal of the impugned order of assessment would show that the Assessing Officer has only taken note of the report filed by the Enforcement Wing Officer for confirming the proposal in respect of the sole issue of sale suppression and equal addition. This Court has repeatedly held in very many decisions that the report of the Enforcement Wing Officer cannot be the sole basis for the Assessing Officer to conclude the assessment without there being any independent reasoning by the Assessing Officer based on the objections raised by the assessee in response to the notice of proposal. In other words, the report of the Enforcement officials may be one of the material for the Assessing Officer to pass the order of assessment and cannot be the sole reason for concluding the assessment. On the other hand, the Assessing Officer has to apply his independent mind to the objections raised by the petitioner and thereafter give his own reasons and findings as to whether the notice of proposal can be confirmed or not. Without doing so, the Assessing Officer is not justified in simply following the inspection report and confirming the proposal. Likewise, the Assessing Officer has also not given personal hearing to the petitioner, especially, when he has chosen to levy penalty under section 27(4) of the said Act. Therefore, for all these reasons, this Court is inclined to remit the matter back to the Assessing Officer to redo the assessment once again after giving due opportunity of personal hearing to the petitioner.

7. Accordingly, the writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment once again on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, by giving independent reasoning and finding. It is made clear that this Court is not expressing any view on the merits of the matter as it is for the Assessing Officer to consider and decide. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of

a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Vandavasi,
Tiruvannamalai District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.76929
+1cc to the Special Government Pleader(taxes), S.R.No.77403

W.P.No.27881 of 2018

SJ(co)
ssm 29.11.2018