BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1164 of 2018
and
WMP(MD)No.1245 of 2018

Vadivel Flame Factory,
Rep.by its Director,
A.Vasantha Vikash,
No.8/217, G.Anuppankulam,
Sivakasi,
Virudhunagar District. ... Petitioner

Vs.

The Assistant Commissioner (CT)-II,
Office of the Assistant Commissioner(CT),
Sivakasi. ... Respondent

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pre-revision notice issued by the respondent in VAT No.33895982271/2012-2013 dated 27.09.2017 and quash the same as illegal, arbitrary and without jurisdiction and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.S.Srimathy,
Special Government Pleader

ORDER

The writ petitioner is a registered assessee with the respondent. The petitioner had filed returns for the assessment years in question. It has been accepted. But, subsequently based on the proceedings initiated by the Central Excise Department, the respondent chose to issue the impugned pre-assessment notice. The same is impugned on the ground that the proceedings initiated by the Excise Department are still pending and that therefore based on the proceedings they have not yet to concluded. It is not open for the respondent to initiate action for re-opening the concluded assessment.

2.The learned counsel appearing for the writ petitioner placed reliance of this Court reported in *(2010) 255 ELT 161 (Rajam Industries (P) Ltd vs. Addl. D.G., D.C.E.I., Chennai)*. The legal issues arising in the present case and in the said decision are one and the same. This Court chose to set aside the revised assessment order with liberty to the authority to proceed afresh either after the adjudication process by the Excise Department gets completed or if any fresh material is found. This Court is however of the view instead of quashing the impugned pre-assessment notice, the same can be directed to be kept in abeyance, till the adjudication by the Central Excise Department gets completed.

3.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner
(CT)-II,
Office of the Assistant
Commissioner(CT),
Sivakasi.

+One cc to Mr.S.Karunakar, Advocate, SR.No.44464

skm
RL/3C/2P/SV/MMS/SAR4/13/2/2018

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