BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.07.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) Nos.10145 to 10151 of 2015
and
M.P.(MD).Nos.1, 1, 1, 1, 1, 1 & 1 of 2015

M/s.Thangamayil Jewellery Limited,
rep. by its Joint Managing Director,
125, (Correct No.124), Nethaji Street,
Madurai. ... Petitioner in all W.Ps

vs.

The Assistant Commissioner (CT)
Nethaji Road Assessment Circle,
Madurai. ... Respondent in all W.Ps

PRAYER in W.P.(MD).No.10145/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2006-07 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10146/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2007-08 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10147/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2008-09 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10148/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2009-10 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10149/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2010-11 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10150/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2011-12 and quash the proceedings dated 15.05.2015 issued therein.

PRAYER in W.P.(MD).No.10151/2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TIN:33304981798/2012-13 and quash the proceedings dated 15.05.2015 issued therein.

In All W.Ps:

For Petitioner : Mr.R.L.Ramani, Sr. Counsel for
Mr.S.Raja Jeyachandra Paul

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

COMMON ORDER

The petitioner is doing jewellery business. Insofar as the purchase tax is concerned, the dealer has to pay the purchase tax every month along with the monthly return provided under Form-I under Section 12 of the TNVAT Act (hereinafter referred to as Act). Insofar as the excess payment made towards purchase tax, there is no clarity as to whether it can be adjusted in the future payment or not. For the purpose of the same, the association of the jewellers made a representation to the Commissioner of Commercial Taxes, seeking clarification. The Commissioner, in his proceedings in MA.KU.VA.No.53336/2007, dated 29.11.2007, has clarified that the excess credit, which is available in credit, can be adjusted and the balance tax can be made. Following the clarification issued by the Commissioner of Commercial Taxes, the petitioner adjusted the input tax credit and the purchase towards the balance tax due under Section 12 of the Act. This was found fault by the respondent and he issued a revision notice stating that full amount of tax has not been paid. Challenging the revision notice, the petitioner is before this Court. The revision notices were issued on the basis of surprise inspections conducted by the Enforcement Wing.

2.The grievance of the petitioner is that once report of the Enforcement Wing is received, if any suppression of sales was complained, it is incumbent on the Assessing Officer to call for account books from the dealers and afford an opportunity to explain the complaint made against him. After verifying the accounts, the Assessing Officer has to issue a proposal with regard to sales suppression. But, contrary to the procedure, without applying the mind, on the basis of the report submitted by the Enforcement Wing, proposals are sent. Aggrieved over the revision notices dated 15.05.2015, the petitioner is before this Court.

3. Heard both sides.

4. Admittedly, there is a clarification issued by the department with regard to adjustment of excess credit made in the tax returns, as per Section 12 of the Act. The clarification issued by the Commissioner of Commercial Taxes states that the excess credit can be adjusted in the following returns, whereas, the revision notices were issued by the respondent that the full amount

of tax has not been paid and it is wrongly adjusted and input tax credit is claimed as per Section 12 of the Act. Secondly, the revision notice with respect to sales suppression is concerned, there was no opportunity given for the dealer to explain his fact. It is well-settled that whenever an inspection is conducted by the Enforcement Wing, the Assessing Officer should independently apply his mind, verify the correctness of the returns, if any defect is found, formulate the proposals and call for objections. He shall not mechanically forward the defects pointed out by the inspection team as proposals.

5. However, in all these revision notices, the respondent has called for objections from the petitioner. Hence, without submitting the objections, the petitioner has straight away approached this Court, which, in my view is premature. The petitioner shall exhaust the opportunity provided to him and can agitate the issue before the assessing authority himself.

6.In such circumstances, a direction is issued to the petitioner to submit his objection along with clarifications issued by the Commissioner of Commercial Taxes and also produce the account books to clarify the sale transaction made by him within a period of 15 days from the date of receipt of copy of this order. On receipt of such explanation, the respondent is directed to consider the same on merits and decide the matter, after affording an opportunity of personal hearing to the petitioner. This exercise shall be completed within a period of one month from the date of receipt of objections.

7.Accordingly, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-III)

To:
The Assistant Commissioner (CT)
Nethaji Road Assessment Circle,
Madurai.

+1cc to Mr.S.RAJA JEYA CHANDRA PAUL, Advocate, SR.No. 73418
+1cc to M/s.Special Government Pleader,SR.No. 74264

W.P.(MD) Nos.10145 to 10151 of 2015
17.07.2018

VS
KK/SKN/SAR-3/01.08.2018/3P-4C/