BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.15743, 15744 and 15745 of 2014
and M.P.(MD)Nos.1, 1 and 1 of 2014

Shri Varsheni Polymers,
Represented by its Partner,
K.D.Dinakaran Babu ... Petitioner

Vs.

The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai. ...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33315401075/2008-09 dated 27.08.2014 and quash the same as invalid, illegal and against the principles laid down by a Division Bench of this Court in 146 STC Page 642.

W.P.(MD) No.15744 of 2014:

Shri Varsheni Polymers,
Represented by its Partner,
K.D.Dinakaran Babu ... Petitioner

Vs.

The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai. ...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33315401075/2009-10 dated 27.08.2014 and quash the same as invalid, illegal and against the principles laid down by a Division Bench of this Court in 146 STC Page 642.

W.P.(MD) No.15745 of 2014

Shri Varsheni Polymers,
Represented by its Partner,
K.D.Dinakaran Babu ... Petitioner

Vs.

The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai. ...Respondent

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33315401075/2010-11 dated 27.08.2014 and quash the same as invalid, illegal and against the principles laid down by a Division Bench of this Court in 146 STC Page 642.

For Petitioner : Mr.A.Chandrasekaran
For Respondents in all the WP's : Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

The petitioner is a registered dealer under Tamilnadu VAT Act, 2006. He filed returns for the assessment years 2008-2009, 2009-2010, 2010-2011. A surprise inspection was conducted by the Enforcement Wing Officials on 05.08.2013 and on cross verification, suppression of sales turnover was reported to the Department. On the basis of the report of the Enforcement Wing officials, a revision notice was issued by the respondent on 30.06.2014 to which the petitioner has submitted his explanation on 30.08.2014 along with the required documents. Even though the Assessing Authority found the documents are correct, has not considered the matter on merits, but followed the directions given by the inspecting team.

2. A perusal of the impugned order reveals that the dealer has submitted all the documents required by the authorities and on verification, it was found to be correct. In view of the report given before the enforcement wing officials, it was not accepted and the relevant portion is extracted hereunder:

> “The dealer has produced all the Purchase bill copies, ledger copies, Bank Payment details, certificates obtained from their sellers and also furnished the copies of sellers returns with annexure II and also the statements and certificates obtained from sellers. All the documents have been verified and found correct”

Having found that the documents produced for verification are correct, has passed the following order:

“The dealers have accepted the sales suppression at the time of inspection admitted the above sales suppression in the statement deposed by the dealer and paid the taxed due thereon at the time of inspection itself. The dealer cannot go back on his own statement. Hence, the objections raised by the dealers now are only afterthought.

...

The dealers have accepted the Discount received at the time of inspection and admitted the above defect in the statement deposed by the dealer and paid the taxes due thereon at the time of inspection itself.

Regarding with the actual suppression arrived for the Sales suppression, the explanations of the dealer are not acceptable, and since the Enforcement Wing officers arrived the sales suppression only with reference to verification of accounts and records produced by the dealer. Moreover, the dealers admitted the suppressions involved in the inspection and paid the taxes due to the time of inspection itself. Hence, the contentions raised by the dealer are only after thought which deserves no consideration”.

3. It is well settled that the assessment authority is an independent officer and he has to apply his mind independently as to the formulation of proposals and also on deciding the matter on merits. This shall be done uninfluenced by the report of the enforcement wing officers. After finding that the dealer has submitted all the documents with respect to Annexures I and II and after having verified to be correct, the assessing authority should have drafted the proposals. But, being influenced by the report of the enforcement wing officials, the assessing authority has passed orders contrary to his own decision. Since the assessing authority has found that all the documents submitted by the dealer were verified and correct, he ought to have passed orders as per his own decision. The impugned order is tainted with official bias, by non-application of mind and failure to exercise the power lawfully expected to be exercised and thus illegal, arbitrary and violative of principles of natural justice.

4. In such circumstances, the impugned order passed by the respondent is liable to be set aside and accordingly, set aside. The matter is remanded back to the respondent for fresh consideration. The respondent is directed to consider the objections and the documents submitted by the petitioner on merits without being influenced by the report of the enforcement wing officials. After providing personal hearing to the petitioner, the respondent shall pass orders in accordance with law within a period of two months from the date of receipt of a copy of this order.

5. In the result, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS-II)

To
The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai.
+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.76023

W.P.(MD) No.15743, 15744 and 15745 of 2014
and M.P.(MD)Nos.1, 1 and 1 of 2014
31.07.2018

CM/TK
KK/RP/SAR-2/03.10.2018/3P-3C