IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-01-2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.31414 of 2006 and
M.P.No.1 of 2006.

Tvl. Prabha Industries,
Represented by its Proprietrix,
A.Swayam Prabha,No.24, Fort Main Road,
Shevapet,Salem. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Shevapet Assessment Circle,
Salem. ... Respondent

PRAYER:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the respondent in TNGST.No. 2640215/2000-01 dated 01.08.2006 and quash the same as being invalid, illegal, contrary to the principles of natural justice and direction of this Hon'ble Court in W.P.Nos.28887 and 28888/05 dated 09.09.05.

For Petitioner :Mr.R.Senniappan

For Respondent :Mr.M.Hariharan
Additional Government
Pleader(Tax)

O R D E R

The order dated 01.08.2006 in respect of payment of tax and penalty is under challenge in the present Writ Petition.

2. The writ petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 and assesee on the files of the respondent.

3. The writ petitioner filed the present writ petition challenging the issuance of notice of payment of tax and penalty mainly on the ground that the impugned order is passed based on

the merits given by the enforcement authority and without adjudicating the matter in the manner known to law and by affording an opportunity to the writ petitioner. In other words, the competent authorities had not adjudicated the matter independently and arrived at a finding contrarily they have blankly followed the instructions/materials supplied by the enforcement wing and the said procedure is unknown to tax jurisprudence. Thus, the writ petition deserves to be considered mainly on the ground that the effective adjudication which is contemplated under the statutory is to be conducted by affording an opportunity to the assessee and the authority competent has to apply his mind with reference to the materials available on records and take a decision.

4. In this aspect, the learned counsel for the writ petitioner submitted a judgment of this Court dated 04.07.2018 in W.P.No.16580 to 16584 of 2018 and the relevant portions of the judgement are extracted hereunder:

> '12. However, the Assessing Officer was bound over and prevented from exercising his statutory power by the direction issued by his superior officer and the direction issued to the respondent to complete the assessment in a particular manner is strictly in conflict with the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites Private Limited Vs. CTO, Arisipalayam Assessment Circle, Salem [reported in (2006) 146 STC 642]. Therefore, even assuming that any such direction is given, it is not binding on the Assessing Officer and he is require to decide the issue influenced by any such direction based on the documents produced by the dealer.
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> 13. For all the above reasons, the writ petitions are partly allowed and the impugned notices dated 18.05.2018 for the assessment years from 2011-12 to 2014-15 and the impugned notice dated 17.05.2018 for the assessment year 2015-16 are quashed. The matters are remanded to the respondent for a fresh consideration. The respondent is directed to afford an opportunity of personal hearing, during which, the petitioner shall be given an opportunity to submit additional representation and after affording an opportunity of personal hearing, the respondent shall scrupulously consider all the documents that the petitioner may produce, their objections dated 24.10.2016 and 16.10.2017 and also fresh objections that the petitioner may submit during the course of personal hearing and take an independent decision in

the matter without in any manner being influenced by the report of the officials of t he Enforcement Wing or his superiors or the observations made in the proceedings rejecting his deviation proposal. No costs. Consequently, the connected WMPs are closed.'

5. In view of the facts and circumstances, the impugned orders passed by the respondent in TNGST.No. 2640215/2000-01 dated 01.08.2006 is quashed.

6. The matters are remanded back to the respondents for fresh consideration. Accordingly, the respondents are directed to afford an opportunity to the writ petitioner to present his case and decide the matter on merits and based on the materials available on record and pass a speaking order.

7.Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb/mrn

To

The Deputy Commercial Tax Officer,
Shevapet Assessment Circle,
Salem.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.5395
+1cc to the Special Government Pleader, S.R.No.5665

W.P.No. 31414 of 2006
and
M.P.No.1 of 2006

NRL(CO)
CS/13/03/2019