IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.03.2019
CORAM:
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY
W.P.No.34360 of 2006
and
M.P.No.1 of 2006

M/s.C.V.Spinners (P) Ltd.,
Palani Road, SVS Mills Post,
Udumalpet.
... Petitioner

Vs.

The Commercial Tax Officer (FAC)
Udumalpet.
... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records of the proceedings of the respondent herein in TNGST : 2480680/2002-03 on his files and quash the proceedings dated 18.08.2006.

For Petitioner : Mr.K.J.Chandran

For Respondents : Mr.M.Hariharan
Additional Government Pleader

O R D E R

This Writ Petition has been filed praying for issue of a writ of certiorari to call for the records of the proceedings of the respondent herein in TNGST : 2480680/2002-03 and quash the proceedings dated 18.08.2006, whereby it was proposed to revise the earlier assessment.

2.The learned counsel appearing for the Petitioner submits that the Impugned Notice dated 18.08.2006 has been issued entirely on the basis of the inspection by the enforcement wing officers and the D-3 Report received pursuant to the said inspection without independent application of mind. In this regard, he invited the attention of this Court to the judgment in M/s.MADRAS GRANITES (P) LTD. Vs. COMMERCIAL TAX OFFICER, ARISIPALAYAM CIRCLE, SALEM AND OTHERS reported in 146 STC 642, wherein the Division Bench of this Court held as follows:-

"It is well-settled that the assessing

> officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed."

Based on the above mentioned judgment of the Division Bench of this Court, the learned counsel for the petitioner submits that the Impugned Notice is not valid and is, therefore, liable to be quashed.

3.The learned counsel appearing for the Respondent submits that these are notices to which objections may be raised by the petitioner and that, therefore, it is not necessary to quash the notices.

4.After careful considering these submissions and keeping in mind the fact this case is still at the notice stage in respect of the proposed revised assessment, this Court directs the respondent to provide a reasonable opportunity to the petitioner, consider all its objections and decide the matter independently by applying its mind and by not mechanically following the investigation report of the enforcement wing(D-Report).

5.In fine, this Writ Petition is disposed of by permitting the petitioner to submit objections to the Impugned Notice within a period of three weeks from the date of receipt of a copy of this order. On receipt of such objections, the respondent is directed to provide a reasonable opportunity to the Petitioner, consider its objections and decide the matter by independently applying its mind, as expeditiously as possible. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rrg

To

The Commercial Tax Officer (FAC)
Udumalpet.

+1cc to Mr.B.Raveendran, Advocate sr.23780
+1cc to Special Government Pleader sr.no.24326

W.P.No.34360 of 2006

gp(co)
nr 10/04/2019