IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.4776 to 4779 of 2012
&
W.M.P.Nos.1, 1, 1, 1 of 2012

M/s Faizan Shoes Private Liited,
Rep by its Chairman and Managing Director
Mr.T.Rafeeq Ahmed.
(...Petitioner in all W.Ps)
Vs.

1.The Assistant Commissioner(CT) (FAC)
Vepery Assessment Circle,
No.3, Ritherdon Avenue,
Chennai – 600 007.

2. The Commercial Tax Officer,
Group I, Enforcement Wing,
PAPJM Buildings, Greams Raod,
Chennai- 600 006.
(...Respondents in all W.Ps)

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the records of the first respondent in TIN:33260521275/2006-07, 33260521275/2007-08, 33260521275/2008-09 & 33260521275/2009-10 (initiated pursuant to the Audit report in Pdl.No.1/09-10/Group-I dated 04/11/2009), quash the impugned revised order undated and signed by him on 02/02/2012 passed pursuant to the instructions of the second respondent being unreasonable, arbitrary and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
(in all W.P.s)

For Respondents : Mr. Mohammed shaffiq
Special Government Pleader
(in all W.P.s)

COMMON ORDER

The assessment orders have been for the assessment years 2006-07, 2007-08, 2008-09 & 2009-10 have been revised based on the defects pointed out by the Value Added Tax Audit (VAT) and such defects were implemented in the present impugned orders.

2.As per the impugned orders, the respondents have stated that the defects pointed out by VAT Audit are proposed to be implemented and on this basis, the orders came to be passed. Such an implementation is not permissible in view of various decisions of this Court, that the respondents are Quasi Judicial authorities who are expected to revise such orders on an independent appraisal of the merits of the case and not based on the remarks made by the superiors. One such decision in the case of M/s.Arcelor Mittal Dhamm Processing (P) Ltd., Vs. The Assistant Commissioner in W.P.Nos.32300 to 32303 of 2014, this Court held as follows:

> ''6.Time and again, this Court has pointed out as to the manner in which the Assessing Authority has to exercise his jurisdiction. The Assessing Authority is a Quasi Judicial Authority and is bound to consider the issues raised by the dealer by appreciating the factual and legal position. It is rather surprising that the respondent being an Assessing Authority has failed to bear in mind the manner in which the power has to be exercised and has passed a cryptic order. The manner in which the impugned order has been passed by the respondent has to be deprecated. Furthermore, the reason assigned for rejecting the objection is wholly illegal.''
>
> 7. The law with regard to the effect of D-3 proposal is well settled and the Hon'ble Division Bench in the case of Madras Granites (P) Ltd Vs. Commercial Tax Officer, Arisipalayam Circle, Salem reported in (2006) 146 STC 642 has held that 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. However if it is found that the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments, the assessments are not sustainable in law.
>
> 8.The Assessing Officer failed to take note of the decision of the Hon'ble Division Bench which has been consistently followed in several cases by this Court. Admittedly, the cause of action for issuing the pre-revision notice was on the basis of the proposal submitted by the Enforcement Wing Officials pursuant to an

inspection conducted in the place of business of the petitioner. When the Assessing Officer issues a pre-revision notice based on the Officer has to independently adjudicate the matter. He shall not be bound by the directions issued by the Enforcement Wing Officials who are undoubtedly officials higher in rank. The respondent in the instant case has abdicated his powers as an Assessing Officer.''

3.In view of this settled proposition of law, the impugned orders cannot be sustained, since, it intends to implement the defects pointed out by the VAT Audit.

4.Hence, the impugned orders for the assessment years 2006-07, 2007-08, 2008-09 & 2009-10, are set aside and the matters are remanded back to the first respondent herein for a fresh consideration. During such consideration, the respondents shall afford an opportunity of personal hearing to the petitioner and pass a speaking order on the basis of his independent appreciation of the objections.

5.With these observations, the writ petitions stand disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vsn

To

1.The Assistant Commissioner(CT) (FAC)
Vepery Assessment Circle,
No.3, Ritherdon Avenue,
Chennai – 600 007.

2. The Commercial Tax Officer,
Group I, Enforcement Wing,
PAPJM Buildings, Greams Raod,
Chennai- 600 006.

W.P.Nos.4776 to 4779 of 2012
&
W.M.P.Nos.1,1,1,1 of 2012

PP(CO)
SP(06/09/2019)