IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.39159 and 39160 of 2015 and
Writ Petition Nos.40441 to 40445 of 2015

W.P.Nos.39159 and 39160 of 2015

Sri Vinayaga Stone Works,
Rep by its Proprietor R.Kanniappan,
357, Main Road,
Kamaraj Nagar,
Avadi,
Chennai- 600 071 ...Petitioner in both W.P.'s

Vs

1. The Assistant Commissioner(Commercial Taxes),
   Avadi Assessment Circle,
   Chennai-600 054.

2. The Assistant Commissioner (CT),
   Central Enforcement Group-I,
   Enforcement-II,
   Chennai.

3. The Joint Commissioner of Commercial Taxes,
   Enforcement II,
   Chennai- 600 006. ...Respondents in both W.P.'s

Prayer in W.P.No.39159 of 2015:
Petition filed under Article 226 of the Constitution of India praying this Hon'ble Court may be pleased to issue a Writ of Mandamus, directing the respondents not to rely upon the unsigned sworn statement dated 30.9.2015 in the assessment proceedings in respect of the petitioner.

Prayer in W.P.No.39160 of 2015: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the third respondent to make a detailed investigation about the alleged interstate purchases as per the petitioner's letter dated 29.10.2015 with the other state dealers and officials and make assessment on the real purchasers in accordance with law.

W.P.Nos.40441 to 40445 of 2015:

Sri Vinayaga Stone Works,
Rep by its Proprietor R.Kanniappan,
357, Main Road,
Kamaraj Nagar,
Avadi,
Chennai- 600 071 ....Petitioner in all W.P.'s

Vs

1. The Assistant Commissioner(Commercial Taxes),
   Avadi Assessment Circle.

2. The Joint Commissioner of Commercial Taxes,
   Central Enforcement Wing II
   Chennai- 600 006. ...Respondents in all W.P.'s

Prayer in all W.P.'s: PETITIONS filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the entire records of the first respondent in TIN/33821300847/2011-12, TIN/33821300847/2012-13, TIN/33821300847/2013-14, TIN/33821300847/2014-15, TIN/33821300847/2015-16 respectively dated 08.12.2015 and quash the notice issued therein and direct the first respondent to complete the assessment without the influence of the second respondent enforcement wing officer.

For Petitioner : Mr.A.P.Srinivas
(in all W.P.'s)

For Respondents : Mr.V.Hari Babu
(in all W.P.'s) Additional Government Pleader (Taxes)

C O M M O N O R D E R

These Writ Petitions have been filed by a Dealer on the file of the first respondent in terms of the provisions of the Tamil Nadu Value Added Tax 2006 (in short 'Act').

2. Writ Petition No.39159 of 2015 has been filed seeking a direction to the respondents not to rely upon an unsigned sworn statement dated 30.09.2015 recorded in the course of assessment proceedings in respect of the petitioner.

3. This is a fair request. It appears that there was an inspection in the premises of the petitioner by officials of the Central Enforcement Wing on 12.08.2015. On the heels of aforesaid inspection, an unsigned report has been sent to the petitioner after nearly one month from the date of inspection.

4. Mr.Haribabu does not advance any defense in respect of the prayer sought.

5. The Mandamus sought for is issued and writ petition is allowed.

6. Writ Petition No.39160 of 2015 seeks a Mandamus directing the third respondent to make a detailed investigation as per the petitioners' letter dated 29.10.2015 into the alleged interstate purchases with other state dealers and officials and frame an assessment thereafter 'on the real purchasers' in accordance with law.

7. A mandamus of this nature is not liable to be granted as it is presumed and expected that a proper investigation will be carried out by the Assessing officer prior to completion of Assessment. Hence, this Writ Petition is dismissed, and the petitioner granted liberty to raise objections in respect of the issue of interstate purchase as and when raised by the officer.

8. W.P.Nos. 40441 to 40445 of 2015 have been filed challenging pre-assessment notices dated 08.12.2015 issued by the first respondent and a direction to the first respondent to complete the assessment without the influence of the second respondent, enforcement wing officer.

9. The impugned pre-assessment notices dated 08.12.2015 call only for objections from the petitioner to the proposals contained therein along with documentary evidence, within a period of ten days. In my considered view the prayer sought for is premature and not liable to be granted as no legal flaw is shown to exist in the impugned notices. The petitioner is therefore permitted to file written objections to the pre-assessment notices dated 08.12.2015 within a period of two weeks from date of receipt of a copy of this order. The first respondent shall afford an opportunity of personal hearing and consider the written objections as well as documentary evidences, if any filed and pass detailed orders, on merits and

in accordance with law, within a period of six weeks from date of conclusion of the personal hearing.

10. These Writ Petitions are disposed as above.

11. In the result:

(i) W.P.No.39159 of 2015 is allowed

(ii) W.P.No.39160 of 2015 is dismissed

(iii) W.P.Nos.40441 to 40445 of 2015 is disposed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner(Commercial Taxes),
Avadi Assessment Circle.

2. The Assistant Commissioner (CT),
Central Enforcement Group-I,
Enforcement-II,
Chennai.

3. The Joint Commissioner of Commercial Taxes,
Enforcement II,
Chennai- 600 006.

W.P Nos.39159 and 39160 of 2015
and W.P.Nos.40441 to 40445 of 2015

SV(CO)
SP(26/02/2020)