IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.23450 TO 23455 OF 2018
& W.P.M.P.NOS.27365 TO 27370 OF 2018

Tvl Sri Kumaran Mills,
Represented by its Partner,
G.Ravi, No.180, Jeeva Nagar,
Mettupalayam Road,
Annur - 641 653,
Coimbatore District.

...Petitioner in all the Petitions

Vs

1. The Assistant Commissioner (CT),
   Avinashi Assessment Circle,
   Avinashi.

2. The Commercial Tax Officer (CEW) -II,
   Office of the Joint Commissioner (CT),
   (Enforcement Wing), Dr.Balasundaram Road,
   Coimbatore - 641 018.

3. The Joint Commissioner (CT),
   (Enforcement Wing), Dr.Balasundaram Road,
   Coimbatore - 641 018.

... Respondents in all the Petitions

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN: 33282083282/2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 respectively dated 21.08.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Court in the judgment reported in (2017) 98 VST 347 (J.A. Motor Sport Vs. State of Tamil Nadu and others).

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.M.Hariharan,
Additional Government Pleader

COMMON ORDER

The petitioner has challenged pre-revision notices, all dated 21.08.2018, for the periods 2011-12 to 2016-17. The petitioner is a dealer in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The impugned notices have been challenged on the ground that pursuant to a visit by the Enforcement Officials in the premises of the petitioner concern, a representation has been filed by the petitioner on 16.03.2017 before the Commercial Tax Officer (CEW-II) (R2) questioning the validity of the statement of stock reconciliation dated 10.02.2017 obtained, according to the petitioner, from third persons. This representation has still not been disposed and the impugned notices had been issued even during the pendency of the same. Great reliance is placed by the petitioner on a decision of the learned single Judge in J.A.Motor Sport v. State of Tamil Nadu and others (98 VST 347).

2. According to Mr.Senniappan, learned counsel for the petitioner, the impugned notices ought to be quashed and a direction be issued to the second respondent to dispose representation dated 16.03.2017 and proceedings for assessment may be initiated only thereafter.

3. According to Mr.Hariharan, learned Standing counsel for the respondents, the pre-revision notices, though based wholly on VSI-3 proposals of the Enforcement Wing, merely call upon the petitioner to file objections to the issues set out therein and the present Writ Petitions are thus pre-mature. He thus prays that the Writ Petitions be dismissed and the petitioner be directed to file objections as called for in the impugned notices.

4. The Assessing Authority, in the matter of framing of assessments has to apply his mind to the issues that arise from the return of turnover filed by a dealer/assessee. However, orders of assessment are routinely passed based wholly on the proposals received from the Enforcement Wing and this case is no different. Though the impugned notice itself does not state so, the respondents in their common counter dated 12.10.2018, admit in paragraph 4 that the pre-assessment notices were issued 'to implement the VSI-3 proposals received from the Enforcement Wing (Group-V) Coimbatore'.

5. This one honest admission by the respondents is sufficient for this Court to set aside the pre-revision notices.

The purpose of pre-revision notices/pre-assessment proposal is not for implementing Enforcement Wing proposals but for putting forth issues that arise from the returns of turnover filed by a dealer/assessee, to the dealer/assessee for response and rebuttal. Such issues are to be identified by an officer by independent application of mind only. No doubt, it is incumbent upon the Officer to study the enforcement proposals and he is permitted to deviate from the same where he believes that the same do not give rise to an assessable issue.

6. It used to transpire that in cases where an Assessing Authority, after having received and perused the proposals from the Enforcement Department, did not agree with the same, had to frame and forward a proposal for deviation, to be approved by a higher authority. This practice was in vogue from the time of Tamil Nadu General Sales Tax Act, 1959. Recently and perhaps in recognition of this anomalous procedure that militates sharply against the independence called for from an Assessing Officer, the Commissioner of State Tax, Chepauk, vide Circular No.3/19 dated 18.01.2019 has issued the following instructions:

> 'Circular No.3/2019 Q1/39643/2018
>
> Office of the Commissioner of State Tax,Chepauk,Chennai -5.
> Dated: 18.01.2019.
>
> ......
>
> b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement Wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher Judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the porposals, and reasons for the same to be recorded.
>
> ...
>
> f) All the deviations proposals pending with the Enforcement wing/ISIC as well as with the Territorial wing for various reasons including cases remanded by the appellate/judicial forms shall be returned immediately to the assessing authorities concerned for implementation.
>
> ....'

7. In the light of the categoric admission in counter to the effect that the impugned notices are based on Enforcement

proposals, the notices have no legs to stand. I am supported by the decision of the learned single Judge in the case of J.A.Motor Sport (supra) wherein, on similar facts, the impugned notices in that case were set aside and the Writ Petitions allowed.

8. The first respondent will issue pre-assessment proposals/pre-revision notices after due and independent application of mind within a period of three (3) weeks from date of receipt of a copy of this order and after hearing the petitioner and considering its reply, orders of assessment shall be passed within a period of four (4) weeks from date of conclusion of personal hearing.

9. The impugned notices are quashed and these Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
   Avinashi Assessment Circle,
   Avinashi.

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   (Enforcement Wing),
   Dr.Balasundaram Road,
   Coimbatore - 641 018.

3. The Joint Commissioner (CT),
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   Dr.Balasundaram Road,
   Coimbatore - 641 018.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.101214
+1cc to the Special Government Pleader, S.R.No.101311

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PA(CO)
CS/20/01/2020