BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.04.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.1426 to 1431 of 2019

and

W.M.P.(MD).Nos.1214 to 1219 of 2019

M/s Bush Nest,
Represented by its partner Sudhir Sharma,
No.7-B, Ramakrishnapuram North 3rd street,
Karur. ... Petitioner in all cases

-vs-

The Assistant Commissioner (CT),
Karur (East) Assessment Circle,
Commercial Tax Buildings,
Karur. ... Respondent in all cases

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN 33673762547/2010-11,2011-12,2012-13,2013-14,2014-15,2015-16 dated 19/12/2018 and quash the same as illegal and contrary to the Provisions of the Act and direct the respondent to pass a assessment order afresh after affording opportunity of being heard by considering reply and records filed on 07/02/2018.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.N.Shanmugaselvam,
Additional Government Pleader
(in all cases)

COMMON ORDER

These batch of writ petitions have been filed challenging the Assessment orders passed for the assessment years 2010-11 to 2015-16. Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order.

2. In all these writ petitions, it is the case of the petitioner that they have been filing the monthly returns and paying tax regularly and the respondent has accepted the monthly returns on deemed assessment basis under Section 22(2) of the Tamil Nadu Value Added Tax Act (TNVAT), 2006. Subsequently, they have proposed to revise the assessment based on the Enforcement Wing officials report and separate pre-revision notices were sent by the respondent to the

petitioner for the aforesaid assessment years. A detailed reply was also sent by the petitioner to the said pre-revision notices, wherein they have categorically denied that there was suppression of sales or purchase by them.

3. Heard Mr.S.Karunakar, learned counsel for the petitioner and Mr.N.Shanmugaselvam, Additional Government Pleader appearing for the respondent in all the writ petitions.

4. According to the petitioner, only based on the Enforcement Wing Officials report, the revision of assessment proposal was made by the respondent and the same was also confirmed by total non-application of mind by the respondent under the impugned assessment orders. According to the petitioner, despite giving a detailed reply to the pre-revision notice, the respondent by a cryptic order, without considering the objections raised by the petitioner, has blindly accepted the report of the Enforcement Wing officers. According to the petitioner, the Enforcement Wing Officers report is not an independent source of information. According to them, the respondent should have passed the assessment orders independently but instead has passed the assessment orders by total non-application of mind.

5. This Court has perused and examined the replies sent by the petitioner to the respective pre-revision notice as well as the impugned assessment orders. As rightly contended by the learned counsel for the petitioner, the respondent has passed a cryptic order rejecting the reply as seen below:

> "*... The reply filed by the dealer was examined and revealed that the contention raised by the dealer in this regard could not be accepted, as the defect pointed out only on scrutiny of accounts during the course of field audit. Therefore, the proposal already made is hereby confirmed.*"

6. It is settled law that while passing the assessment order, the Assessing Officer cannot blindly accept the report of the Enforcement Wing officials of the Department. He has to independently consider whether the said report is factually correct or not. In the instant case, a detailed reply has been given by the petitioner, wherein, they have categorically denied that there is neither sales or purchase suppression with supporting facts and figures. They have also relied upon various judicial pronouncements made in support of their defense. All these factors have not been considered by the respondent under the impugned assessment orders but instead the respondent has outrightly rejected the replies by blindly accepting the Enforcement Wing officers field audit report without any independent source of information.

7. The Enforcement Wing Officials come under the wing of the respondent and they are not an independent body. The Division Bench of this Court in the case of ***Madras Granites (P) Limited vs., Commercial Tax Officer, Arisipalayam Circle, Salem and another***

reported in **2006 146 STC 642,** quashed the assessment on the ground that the Assessing officers completed the assessment adopting turnover found in D-3 proposal forwarded by the Deputy Commissioner (CT) Enforcement. Being a quasi judicial function, the Assessing Officer will have to take an independent decision and he is not bound by the instructions or directions of the higher authorities. This decision has also been followed by various Benches of this Court including a decision rendered on 02.08.2016 by the learned Single Judge of this Court in W.P.(MD) No.20364 to 20366 of 2016 in the case of ***Floor Fixers vs., the Commercial Tax Officer, Chennai.***

8. From the aforesaid decisions, it is clear that the Assessing Officer must take an independent decision and should not blindly accept the Enforcement Wing Officer's report of the Department. For the forgoing reasons, this Court is of the considered view that the respondent has passed the impugned order by total non-application of mind and therefore, all the impugned orders will have to be necessarily quashed.

9. In the result, the impugned assessment orders are hereby quashed and the matters are remanded back to the respondent for fresh consideration and the respondent shall after giving adequate opportunity to the petitioner to raise all objections available to them under law including granting the right of personal hearing shall pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order. With the aforesaid directions, the **Writ Petitions are Allowed.** No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner (CT),
Karur (East) Assessment Circle,
Commercial Tax Buildings,
Karur.

+2cc to Mr.S.Karunakar, Advocate, SR.No. 61090
+1cc to M/s.Special Government Pleader,SR.No.61532,61533,
61534,61535,61536,61537

Common order made in
W.P.(MD).No.1426 to 1431 of 2019

STS
KK/SAR/17.06.2019/3P-5C