IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 30.07.2020
PRONOUNCED ON: 05.08.2020
CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.15077 to 15079 of 2012, 18239 to 18245 of 2015 , 29509 to 29513 of 2016 , 36486 to 36490 of 2016, 44103 of 2016, 32451 & 32452 of 2017, 2310, 2311 & 2326 of 2017 & 15448 to 15451 of 2016 & 10695/2015

and

M.P.Nos.1,1 & 1 of 2012, 1,1,1,1,1,1,&1 of 2015, WMP.25541 to 25545 of 2016, WMP.No.31397 to 31401 of 2016, WMP. 37911 of 2016, WMP.No.35743 & 35744 of 2017, 2300,2301 & 2309 of 2017 & 13468 to 13471 of 2016 & M.P.1 of 2015

1 TVL.TARUN CREATION
REP. BY R.SUNEETHA PROPRIETRIX NO.51
SHERIEF COLONY MAIN ROAD
TIRUPUR-641 604. ... PETITIONER in WP No.15077 of 2012
15078,15079 of 2012

2 M/S.FAIRY LAND FOUNDATIONS
(P) LTD. REP. BY ITS DIRECTOR NO.3
OFFICERS COLONY VARADARAJAPURAM
CHENNAI-42 ...Petitioner in WP.No.18239 of 2015
to 18245 of 2015

3 GOUNDER AUTO PARTS
D.NO. 1029-C MAIN ROAD BHAVANI TALUK-638
301 ERODE DISTRICT ... PETITIONER in WP No.29509 to
WP.29513 of 2016

4 B.S.APPAREL
REP. BY ITS SOLE PROPRIETOR B.VIJAYA
RAGAVAN SHED NO.23 TO 27 TEKIC SIDCO
MUDALIPALAYAM
TIRUPUR-641 606. ...Petitioner in WP.No.36486 of 2016
to 36490/2016

5 DMC AUTOMOTIVE PVT. LTD.
REP. BY ITS AUTHORIZED SIGNATORY A.
SHREENIVASON NO.5 OTHAPPAI VILLAGE
UTHOKOTTAI TALUK TIRUVALLUR-602 023.

... PETITIONER in WP No.44103 of 2016

6. KARUNYA KNIT WEARS ... PETITIONER in WP No.32451 of 2017
REP. BY ITS PROPRIETOR K.L.KAARTHIGHEYAN
ARUCHETTY THOTTAM TVK NAGAR COLLEGE ROAD
TIRUPPUR-641 602.

7 SRI KARUNYA HOSIERY CLOTHING
REP. BY ITS PARTNER K.L.KAARTHIGHEYAN 1A
ARUCHETTY THOTTAM TVK NAGAR COLLEGE ROAD
TIRUPUR-641 602. ... PETITIONER in WP No.32452 of 2017

8 TVL. SHANDONG TIEJUN ELECTRIC
POWER ENGINEERING COMPANY LTD. REP. BY ITS
VICE PRESIDENT PROJECT KOTHATTAI
ARIYAGOSHTTI VILLAGE
CHIDAMBRAM TALUK ... PETITIONER in WP No.2310 of 2017
&WP.No.2311/17 & 2326/2017

9. M.K.AROMATICS (MK AROMATICS
LIMITED) REP. BY ITS MANAGER K.PERIANNAN
43-47 SIDCO INDUSTRIAL ESTATE
ALATHUR-603 110
TAMIL NADU ... PETITIONER in WP No.15448 of 2016
to 15451/2016

10 M/S HEVEA FURNITURE &
INTERIORS PRIVATE LTD REP BY ITS DIRECTOR
51 A IYAMPERUMAL STREET ROYAPETTAH
CHENNAI - 600 014 ... PETITIONER in WP No.10695 of 2015

Vs

1 THE COMMERCIAL TAX OFFICER
BAZAAR CIRCLE TIRUPUR.... RESPONDENT in WP No.15077, 15078,15079 of 2012

2 THE ASSISTANT COMMISSIONER
(CT) (FAC) VELACHERRY ASSESSMENT CIRCLE
CHENNAI -600 061... RESPONDENT in WP No.18239 of 2015 to 18245/2015

3. THE COMMERCIAL TAX OFFICER
BHAVANI ...RESPONDENT in WP.No.29509 of 2016 to 29513/2016

4. THE ASSISTANT COMMISSIONER
COMMERCIAL TAXES, TIRUPUR RURAL CIRCLE
TIRUPPUR ...RESPODNENT in WP.No.36486/2016 to WP 36490/2016

5 THE ASSISTANT COMMISSIONER(CT)
TIRUVALLUR ASSESSMENT CIRCLE
NO.174 JN ROAD
THIRUVALLUR-602 001. ..RESPONDENT in WP.No.44103 of 2016

6 THE ASSISTANT COMMISSIONER
(STATE TAX) NORTH ASSESSMENT CIRCLE
TIRUPUR. ... RESPONDENT in WP No.32451 of 2017 & 32452/2017

7 THE COMMERCIAL TAX OFFICER
CHIDAMBARAM ... RESPONDENT in WP No.2310 of 2017 & 2311/2017 & WP.2326/2017

8.THE ASSISTANT COMMISSIONER(CT)
THIRUKAZHUKUNDRAM ASSESSMENT CIRCLE 42
WAHAB NAGAR THIRUKAZHUKUNDRAM. ...Respondent in WP.15448/2016 to WP.15451/2016

10 THE ASSISTANT COMMISSIONER(CT)
ROYAPETTAH ASST CIRCLE NO.46
GREENWAYS ROAD
CHENNAI - 600 028. ...Respondent in WP.No.10695/2015

WP No.15077 of 2012:Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in TIN No.33402423271/08-09 dated 16.5.2012 and quash the same

WP No.15078 of 2012 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in TIN No.33402423271/ 09-10 dated 16.5.2012 and quash the same

WP No.15079 of 2012 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in TIN No.33402423271/ 10-11 dated 16.5.2012 and quash the same

WP No.18239 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2007-08, and quash the assessment order dated 29.4.2015 made therein

WP No.18240 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2008-09,and quash the assessment order dated 29.4.2015 made therein

WP No.18241 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2009-10,and quash the assessment order dated 29.4.2015 made therein

WP No.18242 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2010-11,and quash the assessment order dated 29.4.2015 made therein

WP No.18243 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2011-12, and quash the assessment order dated 29.4.2015 made therein

WP No.18244 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2012-13, and quash the assessment order dated 29.4.2015 made therein

WP No.18245 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN 33106222344/2013-14,and quash the assessment order dated 29.4.2015 made therein

WP No.29509 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus To call for the entire records of the respondent in TIN : 33302942955/2010-2011 dated 23.06.2016 and quash the order passed therein

WP No.29510 of 2016
To call for the entire records of the respondent in TIN : 33302942955/2011-2012 dated 23.06.2016 and quash the order passed therein

WP No.29511 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus To call for the entire records of the respondent in TIN : 33302942955/2012-2013 dated 23.06.2016 and quash the order passed therein

WP No.29512 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records of the respondent in TIN : 33302942955/2013-2014 dated 23.06.2016 and quash the order passed therein

WP No.29513 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records of the respondent in TIN : 33302942955/2014-2015 dated 23.06.2016 and quash the order passed therein

WP No.36486 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in Assessment No.33332403473/ 2009-2010 dated 2.12.2015 (Signed) and quash the same

WP No.36487 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in Assessment No.33332403473/ 2010-2011 dated 2.12.2015 (Signed) and quash the same

WP No.36488 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in Assessment No.33332403473/ 2011-2012 dated 2.12.2015 (Signed) and quash the same

WP No.36489 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in Assessment No.33332403473/ 2012-2013 dated 2.12.2015 (Signed) and quash the same

WP No.36490 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in Assessment No.33332403473/ 2013-2014 dated 2.12.2015 (Signed) and quash the same

WP No.44103 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN/33431722381/ 2013-2014 dated 28.10.2016 and quash the same, and further direct the respondent to redo the assessment on the above in accordance with law

WP No.32451 of 2017 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in TIN 3312 2305 182 / 2015-16 dated 20.11.2017 and quashing the same

WP No.32452 of 2017 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in TIN 3385 2310 455/ 2015-16 dated 20.11.2017 and quashing the same

WP No.2310 of 2017 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in order dated 30.11.2016 in CST No.384049/ 2011-12 and quash the same

WP No.2311 of 2017 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in order dated 30.11.2016 in CST No.384049/ 2012-13 and quash the same

WP No.2326 of 2017 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in order dated 30.11.2016 in CST No.384049/ 2013-14 and quash the same

WP.No.15448 of 2016:
Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records on the files of the respondent herein in TIN:33451604709/2009-2010 dated 31.03.2016 and quashing the same.

WP No.15449 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in TIN: 33451604709/ 2010-2011 dated 31.3.2016, quashing the same

WP No.15450 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in TIN: 33451604709/ 2011-2012 dated 31.3.2016, quashing the same

WP No.15451 of 2016 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus Calling for the records on the files of the respondent herein in TIN: 33451604709/ 2012-2013 dated 31.3.2016, quashing the same

WP No.10695 of 2015 Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus To Call for the impugned Proceedings of the respondent in TIN/33630781662/2014-2015 dated 27/02/2015 as passed without authority of law and also contrary to the provisions of the TNVAT Act

For Petitioner : Mr.R.Senniappan in WP.15077 to 15079/2012

For Petitioner: Mr.P.V.Sudakar in WP.18239 to 18245/15
Mr.N.Inbarajan in WP.36486 to 36490/16 &32451 &32452/17 & WP.No.15448 to 15451/2016
Mr.N.Murali in WP.44103/2016
Mr.Adithya Reddy in WP.2310,2311 & 2326/2017
Mr.P.Rajkumar in WP.10695/15

For Respondent : Mr.Mohammed Shaffiq (SGP)& Mr.A.N.R.Jaya Prathap (SGP) in all WP's

COMMON ORDER

The Writ Petitions are heard through Video Conferencing on 30.07.2020. With the consent of both the parties, the cases are taken up for final disposal.

2. The common issue involved in all these Writ Petitions is that the impugned proceedings/notices are made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, all the petitioners herein have raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the averments and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioners have been upheld by this Court in various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing),

Sankagiri and another reported in 2015 (81) VST 560 (MAD).

4. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued a Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of the Circular No.3 dated 18.01.2019 reads thus:-

> "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 proposals, and reasons for the same to be recorded."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

5. In view of the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, all the impugned proceedings in these batch of Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are set aside and consequently, the matters are remanded back to the Assessing Officer. The Assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessees/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings, atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above.

6. With the above observations and directions, all the Writ Petitions stand thus allowed. Consequently connected Miscellaneous Petition are closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

DP

To

1.The Commercial Tax Officer,
Bazaar Circle, Tirupur.

2.The Assistant Commissioner
CT (FAC) Vellacherry Assessment Circle
Chennai-600 061

3.The Commercial Tax Officer
bhavani

4.The Assistant Commissioner
Commercial Taxes Tiruppur rural circle
Tirupur

5.The Assistant Commissioner(CT)
Thiruvallur Assessment Circle
No.174, JN Road, Thiruvallur 601 001

6.The Assistant Commissioner
(State Tax) North Assessment Circle
Tiruppur

7.The Commercial Tax Officer
Chidambaram

8.The Assistant Commissioner(CT)
Thirukazhukundram Assessment Circle
42, Wahab Nagar Thirukazhukundram

9.The Assistant Commissioner(CT)
Royapettah Assessment Circle
No.46, Greenways Road, CHennai-600 028

+1 cc to Mr.P.V.Sudhakar Advocate sr26235
+3 ccs to Mr.N.Inbarajan Advocate sr26012
+1 cc to Mr.N.Murali Advocate sr 26000

W.P.Nos.15077 to 15079 of 2012, 18239 to 18245 of 2015 , 29509 to 29513 of 2016 , 36486 to 36490 of 2016, 44103 of 2016, 32451 & 32452 of 2017, 2310, 2311 & 2326 of 2017 & 15448 to 15451 of 2016 & 10695/2015
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M.P.Nos.1,1 & 1 of 2012, 1,1,1,1,1,1,&1 of 2015, 25541 to 25545 of 2016, 31397 to 31401 of 2016, 37911 of 2016, 35743 & 35744 of 2017, 2300,2301 & 2309 of 2017 & 13468 to 13471 of 2016 & M.P.1 of 2015

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aa11/09/2020