IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.08.2020
Pronounced on	19.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19162 of 2015
and
M.P.No.1 of 2015

M/s.Jain Granites & Projects Pvt Ltd.,
Rep by its Director,
89-1, Harrington Road,
(Near Pachiappas College),
Chennai- 600 030. ...Petitioner

-Vs-

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33181021548/2011-2012 and to quash the impugned order dated 19.05.2015 as passed contrary to the objections dated 29.03.2014 filed by the petitioner and also contrary to the Judgment of the Hon'ble Supreme Court in the case of State of Maharastra Vs Suresh Trading Company reported in 109 STC 439 and the Hon'ble Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintadripet Asst Circle reported in 59 VST 256, in the case of M/s.Althaf Shoes (p) Ltd reported in 50 VST 179, in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Mohamed Shaffiq
Special Government Pleader

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O R D E R

The Writ Petition is heard through Video Conferencing on 03.08.2020. By consent of both the parties, the Writ Petition is taken up for final disposal.

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2. One of the issues involved in the Writ Petition is that the impugned proceeding/notice is made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, the petitioner herein has 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 reports and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioner has 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 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 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 Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, the impugned proceeding in

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this Writ Petition, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, is set aside and consequently, the matter is remanded back to the Assessing Officer. The Assessee is granted liberty to file his 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 Assessee/Representative, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings independently and not being influenced by any of the reports or proposals of the Enforcement/ISIC Authorities. Such an exercise shall be completed 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, the present Writ Petition stands thus allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Amaindakarai Assessment Circle.

+1cc to the Spl. Government Pleader (Taxes), Sr.No.27195

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Pre-delivery order in
W.P.No.19162 of 2015
and
M.P.No.1 of 2015

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