IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.22905 of 2015
and
M.P.No.1 of 2015

Tvl.Sri.Ramajayam Road Constructions,
Rep by its Proprietor,
No.3, Cresent Park Street,
T.Nagar, Chennai600 017. ...Petitioner

Vs.

The Commercial Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
R.A.Puram, Chennai-600 028. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent herein, bearing TIN 33491581310/2007-08 dated 26.12.2014 passed under Entry Tax Act and to quash the same and further direct the respondent to grant a reasonable opportunity to the petitioner as provided under Section15(1) of the Entry Tax Act in accordance with law before passing fresh orders.

For Petitioner : No Appearance

For Respondents : Mr.R.Swarnavel
Government Advocate

O R D E R

Today, the matter is listed through Video Conferencing.

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 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

hvk

To

The Commercial Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
R.A.Puram,
Chennai-600 028.

W.P.No.22905 of 2015
and
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CA(CO)
RN(03/11/2020)