IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition Nos.18071 to 18077 of 2016
& W.M.P.Nos.15851 to 15857 of 2016

M/s. Lalith Corrugating Pvt. Ltd.
Rep. By its Director, R.Prakashchand,
No.3 Venkatachalam Mudali St,
Choolai, Chennai 600 112 ... Petitioner in all W.Ps.

..vs..

1. The Assistant Commissioner (CT),
Choolai Assessment Circle,
2nd Floor, Palaniappa Building,
No.10 Greams Road, Chennai 600 006

2. The Commercial Tax Officer,
Group VIII, Enforcement (Central) Division,
No.10 Greams Road,
Chennai 600 006 ... Respondents in all W.Ps.

Common Prayer :- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in TIN:33100500799/2007-08; 2008-09; 2009-10; 2010-11; 2011-12; 2012-13 and 2013-14, dated 29.03.2016, quash the same as illegal, contrary to law and against the principles of natural justice, fair play and direct the first respondent to furnish the details of the alleged difference as per web report, registration cancelled dealers and provide opportunity of cross-examination.

For Petitioner (in all W.Ps.) :Mr. T.Pramodkumar Chopda

For Respondents (in all W.Ps.):Mr. A.N.R.Prathap,
Govt. Advocate (Taxes)

C O M M O N O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel appearing for the petitioner and Mr.A.N.R.Prathap, learned Government Advocate (Taxes) for the respondents. Since common issues are involved in all these writ petitions, they are disposed of by this common order.

2. The petitioner has filed these writ petitions, challenging the orders dated 29.03.2016 passed by the first respondent for the respective assessment years 2007-08 to 2013-14.

3. According to the petitioner, in these writ petitions they are the manufacturer and dealer in corrugated boxes, tray etc, and is registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. During the course of such business, inspection was conducted in the place of business of the petitioner by the Enforcement Wing Officials. On the basis of the inspection, the second respondent issued notice dated 23.05.2014 to which the petitioner filed a detailed reply dated 14.06.2014 denying all the allegations / averments made in the said notice. Taking aid under Section 64 (4) of the TNVAT Act and the decision of this Court in W.P.No.7564 of 2015, dated 18.03.2015, the petitioner also questioned the audit conducted by the second respondent as without jurisdiction and authority of law.

4. It is the further case of the petitioner that without considering the reply and without providing an opportunity of hearing to the petitioner, the second respondent issued D-3 Proposal on the same lines as in the notice, dated 23.05.2014. The petitioner filed a detailed reply dated 14.06.2014 enclosing the required records. Again on 28.01.2015, without considering the objection and providing opportunity of hearing, a notice was issued. Hence the petitioner filed the very same copy of reply dated 14.06.2014 by correcting the date as 18.03.2015 and sent the same to the first respondent, apart from the other two enforcement authorities, to whom the above reply was already filed. Upon receipt of the said reply, the first respondent, after a lapse of more than six months, issued notices for all the assessment years. The petitioner's representative appeared and produced all the records. The first respondent, after verification of the explanations, found that the petitioner's claim was genuine and requested the petitioner to furnish one more set of the records. Accordingly, one more set was filed along with a representation requesting to drop the proposal. However, the first respondent has passed the impugned orders, dated 29.03.2016, levying tax along with penalty and interest. Aggrieved over the same, the present writ petitions came to be filed.

5. The learned counsel for the petitioner submitted that the Commissioner of Commercial Taxes alone is entitled to direct audit of the business operations of the petitioner under Section 64 (4) of the Act and hence inspection done by the second respondent, who is below the rank of Commissioner is against the provisions of law.

6. The learned counsel further submitted that in the impugned orders, the Assessing Authority has given a tabular column wherein the transaction related to turnover sales tax due and also interest payable had been arrived at, however in the pre-assessment notices such a stand was not taken by the Assessing Authority, which is fatal to the assessment proceedings. Stating so, the learned counsel prayed to set-aside the impugned orders.

7. The learned Government Advocate (Taxes) was heard on the submissions made by the learned counsel for the petitioner. He submitted that the orders impugned herein are passed after following the due procedures and in consonance with the provisions of law.

8. This Court has considered the rival submissions made by the learned counsel for both sides and perused the materials available on record.

9. The facts, narrated above, are not under dispute. The challenge in these writ petitions is to the orders passed by the first respondent for the assessment years in question, based on the inspection done by the second respondent.

10. Section 64 (4) of the Act empowers the Commissioner to order for audit of any registered dealers and such audit is required to be done by an Officer not below the rank of Deputy Commercial Tax Officer and such responsibility cannot be delegated to others or usurped by others. In the case on hand, the Joint Commissioner (CT) Enforcement I, who is subordinate to the Commissioner, has ordered for audit, which is against the provisions of the Act. Based on the same, the first respondent has passed the impugned assessment orders, which are as rightly contended by the learned counsel for the petitioner, liable to be set-aside. Hence, this Court is inclined to set-aside the impugned assessment orders and remit the matters back to the authority, for passing orders afresh, after providing due opportunity to the petitioner, for production of necessary accounts as well as filing proper objections.

11. Accordingly the writ petitions are allowed and impugned orders are set-aside. The Assessing Authority / first respondent is directed to issue a fresh notice, if required, within a period of two weeks from the date of receipt of a copy of this order. Otherwise, treating the impugned orders as notices, the petitioner is directed to file necessary objections and documents, within a period of three weeks. On receipt of the same, the first respondent is directed to pass appropriate orders within six weeks, thereafter, after providing due opportunity of personal

hearing to the petitioner. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

srk

To

1. The Assistant Commissioner (CT),
Choolai Assessment Circle,
2nd Floor, Palaniappa Building,
No.10 Greams Road, Chennai 600 006

2. The Commercial Tax Officer,
Group VIII, Enforcement (Central) Division,
No.10 Greams Road, Chennai 600 006

+1cc to Special Government Pleader(Taxes) SR.19343

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AK(CO)
CB(02/07/2020)