

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Dated : 01.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.35072 to 35077 of 2015
and
MP.No.1,1,1,1,1 & 1 of 2015

M/s.Mohan Agencies
rep. by its Proprietor,
24, Velan Street II Lane,
Arumbakkam,
Chennai-600 106.

...Petitioner in all WPs

.Vs.

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle,
7th Floor, Dowlath Towers,
No.59, Taylors Road,
Chennai-600 010.

...Respondent in all WPs

PRAYER in WP 35072 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in the impugned order in TIN No.33451462383/2008-09 dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of the TNVAT Act, 2006 and the Circular No.7/2014(BB1/3589/2014) dated 03.02.2014 issued by the Assistant Commissioner of Commercial Taxes and also against the principles of natural justice and direct the respondent to pass order orders in accordance with law after granting an opportunity of being heard.

PRAYER in WP 35073 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in the impugned order in TIN No.33451462383/2010-11 dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of TNVAT Act 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Asst. Commissioner of Commercial Taxes and also against the principles of natural justice and direct the Respondent to pass orders in accordance with law after granting an opportunity of being heard

PRAYER in WP 35074 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in the impugned order in TIN No.33451462383/2011-12

dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of TNVAT Act 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Asst. Commissioner of Commercial Taxes and also against the principles of natural justice and direct the Respondent to pass orders in accordance with law after granting an opportunity of being heard.

PRAYER in WP 35075 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in the impugned order in TIN No.33451462383/2012-13 dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of TNVAT Act 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Asst. Commissioner of Commercial Taxes and also against the principles of natural justice and direct the Respondent to pass orders in accordance with law after granting an opportunity of being heard.

PRAYER in WP 35076 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in the impugned order in TIN No.33451462383/2013-14 dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of TNVAT Act 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Asst. Commissioner of Commercial Taxes and also against the principles of natural justice and direct the Respondent to pass orders in accordance with law after granting an opportunity of being heard.

PRAYER in WP 35077 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in the impugned order in TIN No.33451462383/2014-15 dated 30.09.2015 to quash the same as it is violative of Section 22, Section 27 of TNVAT Act 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Asst. Commissioner of Commercial Taxes and also against the principles of natural justice and direct the Respondent to pass orders in accordance with law after granting an opportunity of being heard.

For Petitioner : Mrs.Radhika Chandrasekar

For Respondent : Mr.R.Swarnavel, GA (T)

ORDER

With the consent of both the parties, the present Writ Petitions are heard today through Video Conferencing.

is that the impugned proceeding is made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforcement 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 the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, all the impugned proceedings in these 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 Assesseees 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 Assesseees/Representatives, 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 Wing /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, all the Writ Petitions stand thus allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle,
7th Floor, Dowlath Towers,
No.59, Taylors Road,
Chennai-600 010.

+1cc to The Special Government Pleader(Taxes), SR.No.28640

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and
MP.No.1,1,1,1,1 & 1 of 2015