IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 8186 of 2012
and
M.P. No. 1 of 2012

M/s. SAS Engineering (P) Ltd.,
No.5, 1025, Old Mahabalipuram Road,
Perungudi, Chennai - 600 096. ... Petitioner

Vs

1. The Special Committee,
Office of the Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai - 600 009.

2. Assistant Commissioner (CT),
Thiruvanmiyur Assessment Circle,
98, A.V. Church Road,
Chennai - 600 090. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash and set aside the revision order passed by the Second Respondent in TNGST/0924444/2005-2006 dated 27.05.2010 and direct the Second Respondent to provide copies of records recovered at the time of inspection and copy of the Enforcement Report and pass fresh orders without influenced by the Central Excise Proceedings.

For Petitioner : Mr. C. Baktha Siromoni
For Respondents : Mr. R. Swarnavel
Government Advocate

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ORDER

Heard the learned counsel for the Petitioner and the learned Government Advocate for the Respondents.

2. The Petitioner has challenged the order dated 04.11.2011

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passed by the Special Committee under Section 16-D of the TNGST Act, 1959. The Petitioner had filed the above petition under Section 16-D of the TNGST Act, 1959 after the revised assessment order came to be passed on 27.05.2010, wherein, the Petitioner was called upon to pay a sum of Rs. 50,33,958/- and penalty under Section 16(2) of the TNGST Act amounting to Rs. 75,50,937/-.

3. The said order came to be passed after the Petitioner's premises inspected by the Enforcement Wing on 26.11.2005 and 28.11.2005. It appears that the Petitioner was thereafter issued with a notice on 25.03.2008 to which the Petitioner also replied on 31.03.2008 and sought for time for another 10 days to file a reply. However the Petitioner failed to file a reply. Therefore, the impugned Assessment Order dated 27.05.2010 came to be passed.

4. The Petitioner thereafter filed W.P. No. 22769 of 2010 and challenged the same before this Court. The said Writ Petition came to be disposed by an order dated 18.10.2010 with a direction to the Petitioner to file an appeal within a period of two weeks from the date of said order.

5. Instead of filing an appeal against the said order, the Petitioner approached the Special Committee under Section 16-D of the TNGST Act on 26.11.2010. The Special Committee however dismissed the application under Section 16-D vide Order dated 04.11.2011 on the ground that there was no violation of Principles of Natural Justice and therefore order dated 27.05.2010 cannot be interfered with.

6. It is the contention of the Petitioner that the Assessment Order was passed by the Respondents based on the proposals and finding of the Enforcement Wing and therefore the order passed by the Assessing Officer shows non application of mind. According to the Petitioner, the First Respondent ought to have independently passed the revision proceedings under Section 16-D of the TNGST Act, 1959.

7. The learned counsel for the Petitioner relies on the decision of this Court rendered in Sharof Syndicates Vs The Assistant Commissioner (CT), Mayiladuthurai in W.P. Nos. 9026 to 9029 of 2018 which came to be disposed on 13.04.2018 wherein reference was made on the decision of the Division Bench of this Court in the case of Madras Granite Private Limited Vs CTO, Arisipalayam Assessment Circle, Salem, (2006) 146 STC 642, wherein it was held that an Assessing Officer/quasi Judicial officer exercises quasi judicial function for completing the

assessment and he is not bound by the instructions or directions

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of the higher authority namely the Enforcement Wing.

8. It was submitted by the learned counsel for the Petitioner that as per the decision of the Madurai Bench of this Court in the case of Asian Building Materials Private Limited Vs State Tax Officer, Ramanathapuram, [2019] 69 GSTR 320 (Mad) also a reference was made to the decision of this Court in the case of Hindustan Unilever Limited Vs Deputy Commissioner (CT)-II, [2016] 95 VST 296 (Mad) wherein it was observed that assessing officer cannot be bowed down by the observations of the Enforcement Wing and in several cases this malady was noticed on account of the fact that the enforcement officers are superior officers to the assessing officer.

9. This is the case where the Petitioner has wrongly approached the Special committee under Section 16-D of the TNGST Act, 1959 for orders even though the Petitioner had earlier filed writ petition in W.P. No. 22769 of 2010 against the Assessment Order passed under Section 16 of the TNGST Act, 1959 on 27.05.2010. It is noticed that the petitioner had taken time for filing reply, but failed to file a reply and therefore the Second Respondent was left with no other option but to confirm the demand proposed in the notice dated 25.03.2008. It appears that for all these also the Petitioner has not paid the tax on account of stay granted by this Court.

10. Since the impugned order of the Assessing Officer has been passed purely based on the report of the Enforcement Wing, the impugned Order is unsustainable in the light of two decisions. However, to do Justice and I am of the view to meet ends of justice, the case is remitted back to the Second Respondent to pass speaking order within a period of three months from the date of receipt of a copy of this order.

11. The Order dated 27.05.2010 shall be treated as Show Cause Notice. The Petitioner may file an appropriate reply on merits within a period of thirty days from the date of receipt of a copy of this order. It is made clear that if the Petitioner fails to file a reply and/or appear for personal hearing pursuant to this Order, the Second Respondent is at liberty to reconfirm the demand based on the available records.

12. The Writ Petition stands disposed with the above

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observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Special Committee,
   Office of the Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St.George,
   Chennai - 600 009.

2. Assistant Commissioner (CT),
   Thiruvanmiyur Assessment Circle,
   98, A.V. Church Road,
   Chennai - 600 090.

+1cc to the Special Government Pleader(Taxes), S.R.No.12601

W.P. No. 8186 of 2012

SV(CO)
KKV/21/05/2020

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