IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 37051 to 37056 of 2015
and
M.P. Nos.1, 1, 1, 1, 1 & 1 of 2015

M/s. Shri Krisshna Builders & Property Developers Private Limited,
Represented by its Managing Director,
15, Poonamallee High Road,
Maduravoyal, Chennai - 600 099. ... Petitioner in all W.Ps

Vs

1. The Commercial Tax Officer,
J.J. Nagar Assessment Circle,
38 & 39, J.J.Complex,
Thirumangalam,
Anna Nagar, Chennai - 600 040.

2. The Deputy Commissioner (CT),
Zone XI, PAPJM Buildngs, Greams Road,
Chennai - 600 006. ... Respondents in all W.Ps

Prayer in W.P. No. 37051 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2010-2011 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

Prayer in W.P. No. 37052 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2009-2010 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

Prayer in W.P. No. 37053 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2008-2009 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

Prayer in W.P. No. 37054 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2007-2008 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

Prayer in W.P. No. 37055 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2011-2012 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

Prayer in W.P. No. 37056 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in TIN 33580782223/2012-2013 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

For Petitioner (in all W.Ps) : Ms. Hema Muralikrishnan

For Respondents (in all W.Ps) : Mr. R. Swarnavel
Government Advocate

COMMON ORDER

These Writ Petitions have been filed by the Petitioner to call for the records of the First Respondent in TIN 33580782223/2010-2011, TIN 33580782223/2009-2010, TIN 33580782223/2008-2009, TIN 33580782223/2007-2008, TIN 33580782223/2011-2012 and TIN 33580782223/2012-2013 and quash the order dated 30.10.2015 passed therein and further direct the First Respondent to pass assessment order independently and without being influenced by the report of the enforcement wing officers and after verifying the documents seized from the Petitioner at the time of inspection by giving proper and sufficient opportunity of filing of objections and personal hearing to the Petitioner.

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

3. Both the parties submitted that the issue is no longer res integra and has been followed by this Court in W.P. Nos. 23450 to 23455 of 2018 passed on 02.12.2019 in the case of Tvl Sri Kumaran Mills, Coimbatore District Vs The Assistant Commissioner (CT), Avinashi and others. The operative portion of the order reads as under:-

> "6. It used to transpire that in cases where as Assessing Authority, after having received and perused the proposals from the Enforcement Department, did not agree with the same, had to frame and forward a proposal for deviation, to be approved by a higher authority. This practice was in vogue from the time of Tamil Nadu General Sales Tax, 1959. Recently and perhaps in recognition of this anomatous procedure that militates sharply against the independence called for from an Assessing Officer, the Commissioner of State Tax, Chepauk, vide Circular No.3/19, dated 18.01.2019 has issued the following

instructions:

> 'Circular No.3/2019 Office of the Commissioner of Q1/39643/2018 State Tax, Chepauk, Chennai-5.
>
> Dated: 18.01.2019.
>
> ...
>
> 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.
>
> ...
>
> f) All the deviations proposals pending with the Enforcement Wing/ISIC as well as with the Territorial Wing for various reasons including cases remanded by the appellate/judicial forms shall be returned immediately to the assessing authorities concerned for implementation.
>
> ....'

7. In the light of the categoric admission in counter to the effect that the impugned notices are based on Enforcement proposals, the notices have no legs to stand. I am supported by the decision of the learned single judge in the case of J.A.Motor Sport (supra) wherein, on similar facts, the impugned notices in that case were set aside and the writ petitions allowed.

The first respondent will issue pre-assessment proposals/pre-revision notices after due and independent application of mind within a period of three (3) weeks from the date of receipt of a copy of this order and after hearing the petitioner and considering its reply, orders of assessment shall be passed within a period of four(4) weeks from the date of conclusion of personal hearing.

4. These Writ Petitions are disposed in the light of the above order. The Respondents are directed to pass appropriate order within a period of three months from the date of communication of this order. Before passing such orders, the Respondents shall call upon the Petitioner also to make submissions on merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

arb

To

1. The Commercial Tax Officer,
J.J. Nagar Assessment Circle,
38 & 39, J.J.Complex,
Thirumangalam,
Anna Nagar, Chennai - 600 040.

2. The Deputy Commissioner (CT),
Zone XI, PAPJM Buildngs, Greams Road,
Chennai - 600 006.

+1 cc to the Special Government Pleader (Taxes)
sr 11916

W.P. Nos. 37051 to 37056 of 2015
and
M.P. Nos.1, 1, 1, 1, 1 & 1 of 2015

ss(co)
aa17/03/2020