IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.4782 & 4783 of 2015
and
M.P.No.1 of 2015

M/s.Kriticons Limited,
No.29, Sembudoss Street,
Chennai- 600 001. …Petitioner in both cases

Vs.

Assistant Commissioner, (CT)
Broadway Assessment Circle,
Chennai- 600 001. …Respondent in both cases

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33610541404/2008-09 & 2009-10 respectively dated 02.12.2014 and quash the above proceedings passed therein and to direct the respondent to pass fresh orders exempting the labour charges from the levy of sales tax as per the decision of the Supreme Court of India reported in 12 VST 371 after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromoni
(in both cases)

For Respondent : Mr.R.Swarnavel
Government Advocate
(in both cases)

COMMON ORDER

Today, the matter is listed through Video Conferencing. By consent of both the parties, both the Writ Petitions are taken up for final disposal.

2. The common issue involved in both the Writ Petitions is that the impugned proceedings/notices are 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 the 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 proceedings in both the 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 Assessees 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 Assessees/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/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, both the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Assistant Commissioner, (CT)
Broadway Assessment Circle,
Chennai- 600 001.

+1cc to the Special Government Pleader in SR.NO..30808

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and
M.P.No.1 of 2015

SAI(CO)
RV(14/10/2020)