IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.31761 & 31762 of 2014
and
MP.Nos.1 & 1 of 2014

S.Thirugnana Sambanda Moorthy,
Proprietor, "Tvl Sujatha Agencies",
No.18, Subramania Chettiar Nagar,
Imperial Road, Cuddalore O.T. ... Petitioner in both WPs.

Vs.

The Commercial Tax Officer,
Cuddalore Town,
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam,
Cuddalore - 607 001. ... Respondent in both Wps.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in respect of the impugned Orders in TIN:33484382239/2010-11 dated 31.10.2014 and TIN:33484382239/ 2012-13 dated 24.10.2014 respectively passed by the respondent under the Tamil Nadu Value Added Tax Act, 2006 for the years 2010-11 and 2012-13 and quash the same.

For Petitioner : Mr.S.P.Asokan, in both Wps.

For Respondent : Mr.A.N.R.Prathap, GA (T) in both WPs.

COMMON ORDER

Challenging the orders dated 31.10.2014 and 24.10.2014 passed by the respondent with respect to the respective assessment years 2010-11 and 2012-13, the petitioner has preferred the present two writ petitions. In the orders impugned herein, it is stated that the petitioner has suppressed the purchases and corresponding sales turnover in order to evade payment of taxes, which warrant equal additions for probable omissions for earlier and remaining periods and hence, the total and taxable turnover were re-determined and penalty was levied under Section 27(3) of TNVAT Act, for the assessment years in question.

2.The learned counsel for the petitioner submitted that without proper application of mind to the documents submitted by the petitioner, the respondent has passed the impugned orders simply placing reliance on the statement of the Enforcement Wing Officials, which is contrary to the decision of this Court in Amutha Metals Vs. Commercial Tax Officer [(2007) 9 VST 478 (Mad)], wherein, it is held as follows:-

> "In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that:
>
> > "....Their objections were examined in detail. The dealers should have placed all the facts before the inspecting officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. In as much as they had admitted and even paid tax to some extent as per their statement now I find no reason to deviate from the proposals".
>
> If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one

> of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts.
>
> Hence, in both the writ petitions, the impugned orders are set aside and the matters are remitted back to the assessing authority to re-frame the assessment in accordance with the law.”

The learned counsel also submitted that before passing the orders impugned herein, the petitioner has not been provided due opportunity to submit their objections along with the relevant records to the notice for revision of assessment and hence, the same is gross violation of the principles of natural justice.

3.The learned Government Advocate (T) appearing for the respondent has made an attempt to support the orders impugned herein. However, he fairly conceded that the petitioner has not produced the relevant accounts at the time of enquiry and hence, the respondent has passed the orders impugned herein based on the inspection report.

4.After hearing both sides and upon perusal of the documents available on record, more particularly, the orders impugned herein, it is evident that the petitioner has not produced the accounts for the assessment years in question for verification of the assessing authority and so, the respondent has passed the orders, based on the report submitted by the Enforcement Wing Officials.

5.The law is well settled that when the finding of the quasi-judicial authority are found to have been influenced by the advice/information/ evidence, which have been obtained from 3rd party and brought on record without the knowledge of the assessee or without allowing the assessee an opportunity to controvert or disapprove the information, evidence or statement of fact contained in such information or without allowing the assessee to cross-examine such 3rd party, the order has to be found violative of principle of natural justice i.e. such an order is an order in violation of principle of natural justice.

6.In the light of the aforesaid proposition of law, this Court, considering the bonafide contention raised on the side of the petitioner, is inclined to set aside the orders impugned herein. Accordingly, the orders dated 24.10.2014 and 31.10.2014 passed by the respondent are set aside.

The matter is remitted back to the respondent for fresh consideration. The petitioner is at liberty to submit their objections along with the necessary documents to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks thereafter.

7.These writ petitions stand allowed to the extent as indicated above. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To
The Commercial Tax Officer,
Cuddalore Town,
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam,
Cuddalore - 607 001.

+1cc to Spl Government Pleader (Taxes) SR.21799

W.P.Nos.31761 & 31762 of 2014

RLD(CO)
CB(10/07/2020)