IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.15547 to 15549 of 2014
and
W.M.P.Nos.1, 1 and 1 of 2014

Sri Maharaja Industries,
Represented by its Proprietor, K.Paramasivam,
119, Bhavani Road, Erode - 638 004.

... Petitioner in W.P.Nos.15547 & 15548 of 2014

M/s.Sivam Exporters (India),
Represented by its Partner, K.Paramasivam,
119, Bhavani Road, Erode - 638 004.

... Petitioner in W.P.No.15549 of 2014

Vs.

The Assistant Commissioner (CT), (Enf),
Pollachi.

...1st Respondents in W.P.No.15547 of 2014

The Assistant Commissioner (CT),
K.G.Chavadi, Coimbatore.

...1st Respondents in W.P.No.15548 of 2014

The Commercial Tax Officer,
Group II, Enforcement, Tirupur.

...1st Respondents in W.P.No.15549 of 2014

2.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

3.The Assistant Commissioner (CT),
Chithode Assessment Circle,
Chithode, Erode District. ...Respondents 2 & 3 in all W.Ps

Prayer in W.P.No.15547 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 1st respondent in his proceedings in form – VSI-I and quash the surprise inspection – reports dated 17.03.2014 and 25.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

Prayer in W.P.No.15548 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 1st respondent in his proceedings in form – VSI-I and quash the surprise inspection – reports dated 18.03.2014, 19.03.2014, 20.03.2014, 25.03.2014 and 28.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

Prayer in W.P.No.15549 of 2014: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 1st respondent in his proceedings in form – VSI-I and quash the surprise inspection – reports dated 17.03.2014 and 18.03.2014 as being without jurisdiction and authority of law and further direct the 3rd respondent not to implement or use the inspection results against the petitioner for the purpose of assessment/re-assessment.

For Petitioner : Mr.R.Senniappan
(in all W.Ps)
For Respondent : Mr.A.N.R.Jayaprathap
(in all W.Ps) Standing Counsel

C O M M O N O R D E R

By this common order all the three Writ Petitions are being disposed. There was a surprise inspection in the respective petitioners place of business between in 17.03.2014 to 20.11.2014 and on 25.03.2014 in the case of the petitioner in W.P.No.15547 of 2014, on 18.03.2014 in the place of business the petitioner in W.P.No.15548 of 2014 and at the place of business of the petitioner in W.P.No.15549 of 2014 between 17.03.2014 and 19.03.2014 by the Officers attached to the Enforcement Wing of the Commercial Tax Department.

2.Pursuant to the aforesaid exercise inspection reports were furnished and statements were recorded from the responsible officer of the petitioners. The Commercial Tax Officer of the Enforcement Wing thereafter issued Compounding Notices and Compounding Order to the petitioners which are impugned in these Writ Petitions.

3.Though several grounds have been raised by the petitioners, it is noted that the issue is now squarely covered by an order dated 25.07.2016 of this Court in W.P.Nos.14997 to 14999 of 2014 in the case of Tvl.Uma Shankar Traders VS The Commercial Tax Officer, Group-1 (Enforcement) (Central), Chennai And others, Sri Maharaja Refineries Vs The Commercial Tax Officer, P.N.Palayam Circle, Coimbatore and others and M/s.Maharaja Sivam Industries (P) Ltd., VS The Commercial Tax Officer, Group-VI Chennai Enforcement Central, Chennai and others. The Operative Portion of the said order reads as under:-

> "8. After hearing the learned Additional Government Pleader and on perusing the materials placed on record, at the very out set, it has to be pointed out that writ of certiorari cannot be issued, quashing the inspection report or the seizure mahazar or the statement recorded from the dealer. The petitioners would state that the officer does not posses the jurisdiction to record the statement or prepare the inspection report or seize the documents. But however, it appears that the documents were seized from the place of business of the petitioner. Therefore, if the petitioners have any reservations on the statement given by them before the Enforcement Officials, it is always open to the petitioners to raise contention before the assessing officer and it is a settled legal position that the assessing officer, while completing the assessment, cannot solely be guided by the statement recorded by the Enforcement Officials. Therefore, the petitioners need not have any apprehension that their rights and remedies will stand foreclosed, if they allow the impugned inspection report and the statement to stand. It is always well open to the petitioners to contest the merits of the matter, when the assessing officer takes up the issue. Even if in a case the petitioners state that the record does not belong to their company or

organisation that point also could be canvassed before the assessing officer. Since the petitioners have raised the question of jurisdiction and the respondents have stated that there is delegation of power, this Court is not inclined to quash the inspection report or the statement, at this juncture. This issue relating to jurisdiction is left open to be canvassed by the petitioners as and when notice is issued by the assessing officer.

9. With the above observations, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed. Consequently, connected miscellaneous petitions are also closed and the interim order granted by this Court stands vacated.”

4.Since the issue in the present Writ Petitions deals with an identical situation as in the above case, I am of the view the present Writ Petitions also can be disposed in terms of the above decision of this Court.

5.Accordingly, all the above three Writ Petitions are disposed with a direction to the petitioners to participate in the proceedings before the Assessing Officer. Therefore, the petitioners may file its objection/representation before the Assessing Officer within a period of 30 days from the date of receipt of a copy of this order who shall thereafter pass appropriate order on merits. Needless to state, the assessing officer shall hear of the petitioners before order are passed.

6.These Writ Petitions thus stand disposed with the above observation. No costs. Consequently, connected Miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT), (Enf),
Pollachi.

2.The Assistant Commissioner (CT),
K.G.Chavadi, Coimbatore.

3.The Commercial Tax Officer,
Group II, Enforcement, Tirupur.

4.The Joint Commissioner (CT),
(Enforcement), Coimbatore.

5.The Assistant Commissioner (CT),
Chithode Assessment Circle,
Chithode, Erode District.

+1cc to Mr.R.Senniappan, Advocate, Sr.No.8670
+1cc to the Government Pleader, Sr.No.8161

W.P.Nos.15547 to 15549 of 2014
and
W.M.P.Nos.1, 1 and 1 of 2014

RR(CO)
GS(06/08/2020)