IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.2475 TO 2482 OF 2017
AND
W.M.P.NOS.2467 TO 2474 OF 2017

In W.P.Nos.2475 to 2482 of 2017
and M.P.Nos.2467 to 2474 of 2017

Macawber Beekay Private Ltd.,
Rep by its AGM-Accounts,
Mr.P.N.S.Nair,
Neyveli Site Office,
Thermal Power Station-I,
Neyveli-607 803. ..Petitioner in all WPs.

-Vs-

1. The Commercial Tax Officer,
   Cuddalore Taluk Assessment Circle,
   No.8, Sub Jail Road,
   Cuddalore.

2. Commissioner of Commercial Taxes,
   Chepauk,
   Chennai-600 005.

3. Government of Tamil Nadu,
   Rep by its Secretary,
   Commercial Taxes Department,
   Fort St. George,
   Chennai 600 009.

4. The Deputy Commissioner,
   Department of Commercial Taxes of Uttar Pradesh,
   Gautambudha Nagar (B),
   Sector-3, Gautambudha Nagar,
   Uttar Pradesh.

..Respondents in all WPs.

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the Impugned Order passed by the 1st respondent in TIN No:33474402469/2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 dated 19.12.2016 respectively on the file of the 1st respondent herein and to quash the same.

For Petitioner : Mrs.R.Charulatha
(in all Wps.)

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

C O M M O N   O R D E R

The Writ Petitions are heard through Video Conferencing on 30.07.2020. With the consent of both the parties, the cases are taken up for final disposal.

2. The common issue involved in all these 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, all the petitioners herein have 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 averments and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioners have 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 a 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 the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, all the impugned proceedings in these batch of 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 Assessee/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings, 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, all the Writ Petitions stand thus allowed. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
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   No.8, Sub Jail Road,
   Cuddalore.

2. Commissioner of Commercial Taxes,
   Chepauk,
   Chennai-600 005.

3. Government of Tamil Nadu,
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4. The Deputy Commissioner,
   Department of Commercial Taxes of Uttar Pradesh,
   Gautambudha Nagar (B),
   Sector-3, Gautambudha Nagar,
   Uttar Pradesh.

+8cc to M/S.Lakshmi Kumaran, Advocate, S.R.No.30824
+1cc to the Special Government Pleader, S.R.No.30806

W.P.Nos.2475 to 2482 of 2017
and
W.M.P.Nos.2467 to 2474 of 2017

LN(CO)
CS/09/11/2020