IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.31506 & 31507 of 2018
and
WMP.Nos.36724 & 36726 of 2018

M/s.Chhotabhai Retailing India P. Ltd.,
Rep. by its Director,
No.140, Nungambakkam High Road,
Chennai-600 034. .. Petitioner in both WPs

Vs

The Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
Chennai-600 031. .. Respondent in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records of the respondent in his proceedings in TIN. 33620461519/ 2011-12 and TIN. 33620461519/ 2012-13 respectively quash the assessment order dated 28.09.2018 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr. Mohammed Shaffiq, Spl.G.P.

COMMON ORDER

Heard Mr.P.V.Sudakar, learned counsel for the petitioner and Mr.Mohammed Shafiq, learned Special Government Pleader for the respondent.

2. These two writ petitions challenge orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2011-12 and 2012-13.

3. Mr. Mohammed Shaffiq, learned Special Government Pleader would fairly point out that the impugned assessments are passed entirely upon the report of the officials of the Enforcement Wing and do not reflect any independent application of mind on the part of the Assessing Officer. Circular No.3/2019 issued by the Additional Chief Secretary/Commissioner of State Tax dated 18.01.2019, in the context of this very issue states as follows:

Circular No.3/2019 Office of the Commissioner of
Q1/39643/2018 State Tax, Chepauk, Chennai - 5.

Present: Dr.T.V.Somanathan, I.A.S.,

Additional Chief Secretary/Commissioner of State Tax

……………..

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 inconformity 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.

…………….

4. Thus, it is very clear that even in the case where there is an adverse report by the Enforcement Wing in regard to a particular issue, the Assessing Officer is at liberty and in fact ought to examine the issue independently. This has admittedly not been done in this case. Hence, the impugned orders are quashed and the Writ Petitions allowed.

5. Liberty is sought for and is granted permitting initiation of proceedings afresh, if at all, within a period of six weeks from date of receipt of a copy of this order.

6. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Sl

To

The Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
Chennai-600 031.

+1cc to the Special Government Pleader(T), S.R.No. 24839

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VG II(CO)
GN(07/08/2020)