IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.22701 & 22702 of 2011

& M.P.Nos.1 & 1 of 2011

M/s.Vinoth Agencies,
Represented by its Proprietor,
No.32/3, Tiruvellore Road,
Uthukottai 602 026. ..Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Thiruvellore Assessment Circle,
Thiruvellore. ..Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent issued in TIN33221720217/2007-08 and TIN33221720217/2008-09, both dated 24.12.2010 and quash the same as the proposal to add the income received through credit notes from the vendors to the sales turnover of the petitioner and assess the same, is untenable in law and also without jurisdiction.

(In both W.Ps.)

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Veluchamy
(Government Advocate)

COMMON ORDER

These Writ Petitions are filed challenging the notices issued by the respondent on 24.12.2010 and the notices impugned reveal that based on the reports submitted by the Enforcement Wing on 03.11.2010, the authorities competent proposed to revise the accounts of the dealer for the Assessment Years 2007-08 and 2008-09. The petitioner-dealer was provided with an opportunity to submit its objections. Instead of filing objections, the petitioner has chosen to file the present Writ Petitions.

2.A writ against a show cause notice may be entertained only if the notice was issued by an incompetent authority, having no jurisdiction or if an allegation of malafides are reached. Even in case of raising the allegation of malafides, the authorities against whom such allegation is raised, must be impleaded as a party respondent in his personal capacity. In all cases, the petitioner/noticee has to file its objections along with the documents and evidences, if any, and the authorities competent must be allowed to proceed with the enquiry and consider the documents and pass orders in accordance with law. The High Court cannot adjudicate the complex and disputed facts raised in the matter of assessment of turnovers and determination of documents. Such an exercise require an expertise and the authorities competent, who are trained, must be allowed to verify the original files, conduct an enquiry and decide the issues, on merits and in accordance with law.

3.The learned counsel for the petitioner made a submission that there are judgments in favour of the petitioner to nullify the actions taken by the respondent. If so, the petitioner is at liberty to submit all those documents, evidences and objections, enabling the authorities to consider the same, take a decision and pass final orders. This being the factum established, the petitioner is at liberty to submit their objections, documents, evidences, etc., within a period of three weeks from the date of receipt of a coy of this order and on receipt of such objections, the respondent shall consider the same on merits and in accordance with law and pass orders, by affording opportunity to the writ petitioner, as contemplated under the act. Even thereafter, if the petitioner is aggrieved, it is left open to the petitioner to prefer a statutory appeal, by following the procedures contemplated.

4.With these observations, both the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

The Commercial Tax Officer,
Thiruvellore Assessment Circle,
Thiruvellore.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.32395

W.P.Nos.22701 & 22702 of 2011

PCH(CO)
SB(26/07/2021)