IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 24813 of 2013

Tvl Carpenters Classics India Private Limited,
Represented by its Regional Manager,
Thiru.D.Senthilkumar,
No.370-375, S.N.Chetty Street,
Tondiarpet, Chennai - 600 081 ...Petitioner

-vs-

1. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer (Main),
   Tondiarpet Assessment Circle,
   Kuralagam Annex, Chennai - 600 108.

3. The Commercial Tax Officer,
   Group - I, Enforcement East,
   Chennai - 600 006.

4. The Deputy Commissioner (CT),
   Enforcement East,
   Chennai - 600 006. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records on the file of the first respondent with regard to the impugned Circulars Q3/3259/2010 dated 14.06.2010 and Q3/39391/2012 dated 12.12.2012 making certain modifications in the earlier circular and quash the same as illegal, arbitrary, discriminative, suppressive of the quasi-judicial independence of the assessing officers, contrary to the principles of natural justice and against the Constitutional scheme and consequently to direct the first respondent to refrain from undermining the quasi-judicial independence of the assessing officers in any manner whatsoever.

For Petitioner : Mr.P.Asokan

For Respondents : Mr.V.Nanmaran
Government Advocate

O R D E R

By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. In the writ petition, the petitioner, who is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959, (in short "TNGST Act"), Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") and the Central Sales Tax Act, 1956, (in short "CST Act"), challenges the notices, dated 23.11.2010 and 05.01.2011 issued by the second respondent.

3. The petitioner has challenged the notices in question primarily on the ground that no useful purpose would be served by submitting their objections before the Assessing Officer, since the Assessing Officer would be solely guided by the proposal submitted by the Enforcement Wing Officials, more so, when there is a circular, dated 14.06.2010, issued by the Commissioner of Commercial Taxes, to accept or reject the request to the Assessing Officer to deviate from the assessment proposal of the Enforcement Wing Officials and by granting such a power to the Revisional Authority, the power conferred under Section 32 of the TNGST Act as well as Section 53 of the TNVAT Act have become absolutely meaningless.

4. In my view, the writ petition need not be kept pending, since the impugned proceedings are only show cause notices. However, the apprehension of the petitioner should also be taken note off as well while granting liberty to the petitioner to submit its reply.

5. It is settled legal principle that the Assessing Officer has to independently apply his mind to the issue based on the returns filed and the documents produced by the Assessee along with the returns. In fact, this Court has held that, even in cases, where there is no specific provision for an opportunity of personal hearing, as long as there is no prohibition under the statute, personal hearing should be afforded to the Assessee, so as to clarify the doubts then-and-there, which may arise while dealing with the assessment, which involves appreciation of documents and records.

6. Therefore, merely because there is a proposal by the Enforcement Wing Officials, that may not be a sole factor or a

dominant factor for the decision to be taken by the Assessing Officer. In terms of the scheme of the Act, the Assessing Officer has to independently deal with each assessment.

7. In the light of the above, there will be a direction to the petitioner to submit its objections to the impugned notices within a period of 15 days from the date of receipt of a copy of this order. On such objections being received by the respondents, the respondents shall:-

(i) consider the same, without being solely guided by any report submitted by the Enforcement Wing Officials;

(ii) afford an opportunity of personal hearing to the petitioner to enable them to produce the relevant records and documents; and

(iii) pass final orders within a period of eight weeks, after the conclusion of the personal hearing.

8. With these observations, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

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Kuralagam Annex, Chennai - 600 108.

3. The Commercial Tax Officer,
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4. The Deputy Commissioner (CT),
Enforcement East,
Chennai - 600 006.

Copy to

The Regional Manager,
Thiru.D.Senthilkumar,
Tvl Carpenters Classics India Private Limited,
No.370-375, S.N.Chetty Street,
Tondiarpet,
Chennai - 600 081.

+1cc to Mr.S.P.Asokan, Advocate, S.R.No.39967
+1cc to the Government Pleader, S.R.No. 40539

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NSK 09/09/2021