IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. Nos. 44740 to 44743 of 2016
and
W.M.P.Nos. 38558 to 38561 of 2016

M/s.Asian Departmental Stores,
Represented by its Managing Director
Mr.Jahir Hussain,
No.23, South Car Street,
Chidamabaram - 608 001. ... Petitioner in all W.Ps

Vs

1.The Commercial Tax Officer,
Chidambaram-II Assessment Circle,
Chidambaram.

2.The Commercial Tax Officer,
Enforcement Group-I,
Virudachalam.

3.The State of Tamilnadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 600 009.
... Respondents in all W.Ps

Prayer in W.P.No.44740 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TIN No.33024461547/2011-12 dated 28.11.2016 served on 20.12.16 quash the same and further direct the 1st respondent to re-do the assessment without being influenced by the "WEB-REPORT" and directions issued by his higher authorities pursuant to the unauthorized VAT Audit inspection, after mandated enquiry under section 27 of the Tamilnadu Value Added Tax Act, 2006 by verifying the records produced by the petitioner before the second respondent and before him without any bias and thereafter pass orders in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.44741 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TIN No.33024461547/2012-13 dated 28.11.2016 served on 20.12.16 quash the same and further direct the 1st respondent to re-do the assessment without being influenced by the "WEB-REPORT" and directions issued by his higher authorities pursuant to the unauthorized VAT Audit inspection, after mandated enquiry under section 27 of the Tamilnadu Value Added Tax Act, 2006 by verifying the records produced by the petitioner before the second respondent and before him without any bias and thereafter pass orders in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.44742 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TIN No.33024461547/2013-14 dated 28.11.2016 served on 20.12.16 quash the same and further direct the 1st respondent to re-do the assessment without being influenced by the "WEB-REPORT" and directions issued by his higher authorities pursuant to the unauthorized VAT Audit inspection, after mandated enquiry under section 27 of the Tamilnadu Value Added Tax Act, 2006 by verifying the records produced by the petitioner before the second respondent and before him without any bias and thereafter pass orders in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

Prayer in W.P.No.44743 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TIN No.33024461547/2014-15 dated 28.11.2016 served on 20.12.16 quash the same and further direct the 1st respondent to re-do the assessment without being influenced by the "WEB-REPORT" and directions issued by his higher authorities pursuant to the unauthorized VAT Audit inspection, after mandated enquiry under section 27 of the Tamilnadu Value Added Tax Act, 2006 by verifying the records produced by the petitioner before the second respondent and before him without any bias and thereafter pass orders in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
(In all W.Ps)
For Respondents: Mr.R.Swarnavel
(In all W.Ps) Government Advocate

COMMON ORDER

By this common order all the writ petitions are being disposed of.

2. The petitioner has challenged the impugned orders passed by the respondents seeking to revise the original assessments.

3. After the assessments were completed for the Assessment Years 2011-2012 to 2014-2015, an audit was conducted by the officers of the Enforcement Department dated 22.05.2016 purportedly in pursuance of an authorization of the Commissioner of Commercial Taxes bearing Ref. Proc.No.Q3/11740/2013 dated 16.05.2014.

4. The notices were issued to the petitioner for these Assessment Years which referred to few letters of the Joint Commissioner of Commercial authorizing audit. After the audit was completed, the petitioner refused to sign the audit report. It is contended that the officials were forcing the petitioner to sign the audit note. The petitioner was thereafter issued with notices for these Assessment Years based on the audit report. The petitioner also replied to the same, which has now culminated in the impugned orders.

5. The impugned orders which have been challenged in these writ petitions are primarily contested on the ground that the original authorization based on which audit was conducted cannot be survive in the light of the decision of the Division Bench of this Court in Joint Commissioner (CT) and others Vs M/s.Original Vel Sporting News, wherein, this Court by an order dated 04.06.2019 in W.A.No.1757 of 2019 has quashed the order of the Commissioner of Commercial Taxes, Chennai-5.

6. It is noticed that the impugned orders which have been passed pursuant to the aforesaid authorization of the Commissioner, which has been quashed by order of this Court, the impugned orders are also liable to be quashed.

7. I have considered the submissions of the learned counsel for the petitioner and the respondents. I have perused the impugned orders and the decision of this Court in Joint Commissioner (CT) and others Vs M/s.Original Vel Sporting News. (referred to supra).

8. The notice to revise the Assessment Orders were based on the Government Order which stands quashed. Therefore, the Impugned Orders are also liable to be quashed. At the same time, the respondents are at liberty to reopen the assessment under Section 27 of the TNVAT Act, 2006 independent of the audit conducted by the officers of the Enforcement Wing of the Commercial Tax Department. The information contained in the audit report and the orders which stands quashed can be the basis for a corrigendum notice that can be issued to the petitioner with a proposal to revise the assessment.

9. Therefore, while quashing the impugned orders, I direct the 1st respondent to issue suitable corrigendum notice to the petitioner with a proposal to revise the assessment within a period of 45 days from the date of receipt of a copy of this order.

10. On such corrigendum being issued to the petitioner, the petitioner shall file reply within a period of 45 days thereafter. The 1st respondent shall pass a fresh speaking order in accordance with law after giving an opportunity of being heard either in person or through video conferencing, within a period of 3 months thereafter.

11. It is made clear that the information gathered during the audit can be used for the purpose of issuing notice. It is also made clear that the petitioner will be entitled to make all submissions/defences that are available in law.

12. These Writ Petitions are allowed by way of remand. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb
To
1.The Commercial Tax Officer,
Chidambaram-II Assessment Circle,
Chidambaram.
2.The Commercial Tax Officer,
Enforcement Group-I,
Virudachalam.
3.The Secretary,
Government of Tamilnadu,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 600 009.

+1 cc to The Government Pleader Sr.No. 10051

W.P. Nos. 44740 to 44743 of 2016
and
W.M.P.Nos. 38558 to 38561 of 2016

GJ(CO)
RMP(29/03/2021)