IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.14601 & 14602 OF 2014
AND
M.P.NOS.1 & 2 OF 2014

Shri K.T.Oil Mills,
Rep., by is Partner, S.Ramesh,
No.367-E, Pillaiyar Nagar,
Salem-5. .. Petitioner in both W.Ps.

-vs-

1. The Commercial Tax Officer (Enf),
Group VII, Coimbatore.

2. The Deputy Commercial Tax Officer (Enf),
Group II, Tirupur.

3. The Deputy Commercial Tax Officer (Enf),
Central Enforcement Wing-II,
Coimbatore.

4. The Joint Commissioner (CT),
(Enforcement Wing), Coimbatore.

5. The Assistant Commissioner (CT),
Suramangalam Assessment Circle,
Salem. .. Respondents in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent in his proceedings in form -VSI-I surprise inspection – reports dated 05.02.2014 and 06.02.2014 and connected notice issued by the 5th respondent in TIN.33402802153/2011-12 and TIN.33402802153/2012-13 dated 25.04.2014 and quash the same as being without jurisdiction and authority of law and further direct the 5th respondent not to implement the inspection results against the petitioner for the purpose of assessment/re-assessment.

For Petitioner (In both W.Ps.)	:	Mr.R.Senniappan
For Respondents (In both W.Ps.)	:	Mr.V.Veluchamy, Government Advocate

COMMON ORDER

The surprise inspection report dated 05.02.2014 and 06.02.2014 passed by the first respondent and the connected notice issued by the fifth respondent on 25.04.2014 are sought to be quashed in the present writ petitions. Further direction is sought for against the fifth respondent not to implement the inspection report against the petitioner for the purpose of assessment/re-assessment.

2.The petitioner is a registered dealer on the file of the fifth respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act"). On 05.02.2014, the first respondent along with a team of officer, visited the petitioner's place of business and informed that they have been authorized by the Joint Commissioner (CT), Enforcement Wing, Coimbatore for the purpose of conducting surprise inspection under Section 64 of the TNVAT Act. The inspection was conducted in the business premises of the petitioner between 05.02.2014 and 06.02.2014 and the surprise inspection report was submitted.

3.The learned counsel for the petitioner states that the reply given by the petitioner was not considered and without considering the statements of the petitioner, the notice was issued on 25.04.2014. Thus, the respondents have violated the principles of natural justice. The petitioner has stated that the surprise inspection report itself is improper and on that ground also, the writ petitions are to be considered.

4.Perusal of the surprise inspection report as well as the consequential notice would reveal that the inspection was conducted and certain documents were seized. The notice dated 25.04.2014 was issued to the petitioner furnishing proposed calculation and details and an opportunity was provided to the writ petitioner to submit their objections within a period of seven days. Instead of submitting objections by availing the opportunities and to establish their innocence or otherwise, the petitioner has chosen to file the present writ petitions.

5.Writ against a notice is not entertainable in a routine manner. The very purpose of notice and the proposed contentions informed to the petitioner in the present case is for the purpose of submitting their objections enabling the authorities to consider the same and take a decision and pass orders. Thus, providing an information through the notice would be of helpful to the assessee to submit their defence/objections in a precise manner. In this regard, writ petitions are filed stating that the notice has been issued without any particulars and therefore, the assessee is unable to submit their defence statement. If the proposed informations are provided, then also they say that the officials have predetermined the issues. Such a stand can never be appreciated by the Courts. The informations and details provided in the notices are to be construed as proposal and cannot be concluded as predetermination. All such informations are undoubtedly would be of greater help to the assessee to submit their objections in a precise manner. Therefore, such stand taken by the assessee cannot be considered by this Court.

6.It is needless to state that the informations and calculations provided are only proposals and such proposals are to be considered with reference to the objections as well as the documents and evidences to be produced by the writ petitioner pursuant to the notice issued.

7.This Court is of the considered opinion that when surprise inspections are conducted under Section 65 of the TNVAT Act, further procedures are to be followed for the purpose of concluding the proceedings. In the present case, the petitioner has filed the writ petitions questioning the surprise inspection report itself. This Court do not find any merit on this, as further opportunities are to be availed by the petitioner for the purpose of defending their case. There is a possibility of accepting the defence by the authority, if those objections are convincing. Therefore, High Court need not consider those disputed facts which all are to be adjudicated with reference to the documents and evidences as well as based on the seized materials collected from the premises of the petitioner.

8.This being the factum established, the petitioner is at liberty to submit their objections within a period of three weeks from the date of receipt of a copy of this order and on receipt of such objections, the 5th respondent shall consider the same and continue the proceedings by following the procedures contemplated under the statute and rules and by affording opportunity to the writ petitioner and conclude the same as expeditiously as possible.

With the above observations and directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Commercial Tax Officer (Enf),
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Central Enforcement Wing-II,
Coimbatore.

4. The Joint Commissioner (CT),
(Enforcement Wing), Coimbatore.

5. The Assistant Commissioner (CT),
Suramangalam Assessment Circle,
Salem.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.34402
+1cc to the Special Government Pleader(T), S.R.No.34071

W.P.Nos.14601 & 14602 of 2014

RLD(CO)
CS/11/08/2021