BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.10013, 10590, 11108, 11109 and 11110 of 2018
and
W.M.P.(MD)Nos.9152, 9658, 10166, 10167 and 10168 of 2018

Kanam Latex Industries Private Limited,
Rep. by its Director, 13/1423, M.S.Road,
Parvathipuram, Nagercoil,
Kanyakumari District. ... Petitioner in all W.Ps

Vs.

The Commercial Tax Officer,
Thuckalay Assessment Circle, Thuckalay,
Kanyakumari District. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings made by the respondent in TIN-33406160681/2012-13, TIN-33406160681/2011-12, dated 27.03.2018 and TIN-33406160681/2013-14, dated 26.04.2018, TIN-33406160681/2014-15, dated 27.04.2018 and TIN-33406160681/2015-16 dated 30.04.2018 respectively and quash the same as illegal.

(In all W.Ps)

For Petitioner	:	Mr.M.Mahaboob Athiff For M/s.Ajmal Associates.
For Respondent	:	Mrs.J.Padmavathi Devi, Special Government Pleader.

COMMON ORDER

Heard the learned counsel on either side.

2.Kanam Latex Industries Private Limited has filed these five writ petitions in respect of the assessment years 2011-12 to 2015-16. The petitioner's assessments that were concluded on deemed assessment basis under Section 22(2) of Tamil Nadu Value Added Tax Act were sought to be reopened, based on the proposal given by the Enforcement Wing. The Enforcement Wing Officials had inspected the petitioner's place of business on 19.01.2017. Based on their report, pre-revision notice dated 26.03.2018 was issued. The petitioner gave his reply on 16.04.2018. Thereafter, the impugned orders came to be passed. They are assailed in these writ petitions.

3.The respondents have filed a counter affidavit, seeking to sustain the impugned orders.

4.I carefully considered the rival contentions and went through the materials on record. The petitioner in his reply has set out as many as seven reasons as to why the proceedings must be dropped. They have been dealt in the following manner:-

> "*Their objections were considered and examined carefully with the following result:-*
>
> *The Enforcement Wing Officials conduced a surprise inspection in their place of business on 19.01.2017. During the inspection, the inspecting officials had pointed out the defects and evolved the proposal after examining the records in their business premises.*

5.In other words, it is obvious that the assessing officer has not applied his mind independently. He has rather chosen to be guided by the stand of the Enforcement Wing Officials. Such an approach has been deprecated in more than one decision. The learned counsel for the petitioner draws my attention to the order dated 02.03.2007 made in W.P.Nos.7784 and 7785 of 2007 (M/s.Amutha Metals Vs. The Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai). While allowing the said writ petition, a learned Judge of this Court held as follows:-

> "*If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with*

reference to their accounts."

6.That part, no personal hearing was given to the petitioner. The Hon'ble Division Bench, in the case of G.V.Cotton Mills (P) Ltd., Vs. Assistant Commissioner (CT), Avarampalayam Assessment Circle, Coimbatore), dated 16.03.2018 in W.A.Nos.234 to 240 of 2015 held as follows:-

> *"10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the preassessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."*

7.The impugned orders are vulnerable on these two grounds. They are accordingly quashed. The writ petitions are allowed. The matters are remitted to the file of assessing officer to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Commercial Tax Officer,
Thuckalay Assessment Circle, Thuckalay,
Kanyakumari District.

+1 CC to Mr. Special Government Pleader, SR.No. 9184

W.P(MD)Nos.10013, 10590, 11108, 11109 and 11110 of 2018

04.03.2021

SRK(CO)

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