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.8396 and 8397 of 2018
and
W.M.P.(MD)Nos.7947, 7948, 9070 and 9071 of 2018
and
W.M.P.(MD)Nos.4088 and 4089 of 2019

B.Padmanabhan ... Petitioner in both W.Ps

Vs.

1.The Deputy Commissioner (CT),
Kumbakonam,
Commercial Tax Buildings,
Kumbakonam.

2.The Deputy Commissioner (CT),
Enforcement Wing, Trichy Division,
Commercial Tax Buildings,
Court Campus, Trichy.

3.The Commercial Tax Officer,
Kumbakonam -II Assessment Circle,
Commercial Tax Buildings,
Kumbakonam. ... Respondents in both 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 in RC.1255/2015/B1 dated 15.03.2018 issued by the 3rd respondent for the assessment year 2013-14 and 2014-15 and quash the same as illegal, arbitrary, without jurisdiction.

(In both W.Ps)
For Petitioner : Mr.N.Sudalai Muthu
For Mr.S.Karunakar.

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is not a dealer. However, he came under an adverse notice of the Enforcement Wing, who conducted inspection on 09.03.2015. Based on the same, notice was issued to the petitioner herein on 28.08.2015. The petitioner gave his objections. Personal hearing was also conducted. It appears that the assessing officer was convinced with the stand taken by the petitioner herein. Therefore, the assessing officer sent a deviation proposal to the Enforcement Wing. The Enforcement Wing declined to accept the deviation proposal sent by the assessing officer. It was returned. Therefore, the impugned orders came to be passed confirming the proposals set out in the notices. Questioning the same, these writ petitions have been filed.

3.The respondents have filed counter affidavit and the learned Special Government Pleader took me through the contents and wanted me to sustain the orders impugned in these writ petitions.

4.The orders impugned in these writ petitions are liable to be quashed for the simple reason that the assessing officer did not apply his mind independently but went by the dictation of the Enforcement Wing.

5.The learned counsel for the petitioner draws my attention to the order dated 02.08.2016 in W.P.Nos.20364, 20365 and 20366 of 2016 (Floor Fixers Vs. The Commercial Tax Officer, Kottupuram Assessment Circle, Chennei. In the said decision, it was held as follows:-

> "*6. When the Writ Petitions came for admission, i.e., on 16.06.2016, this Court, considering the fact that, seldom, the Assessing Officers exercise their independent powers, what they are normally expected to do, granted interim stay, and directed the learned Additional Government Pleader to get instructions in the matter. For better reference, the interim order is quoted hereinbelow:- "Heard Mr.N.Murali, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader for the respondent. 2. The impugned order of assessment has been passed by the Assessing Officer as total disregard to the settled legal principle and total abdication of the statutory duties of an Assessing Officer. In fact, the 5 Assessing Officer had rightly submitted a deviation proposal, dated 30.10.2015. However, it appears that jurisdictional Deputy Commissioner (CT)*

Zone VII sent a communication to the Assessing Officer on 25.01.2016. Presumably, based on such communication, the Assessing Officer has passed the impugned order. But, while doing so, she has not referred to what is the direction or order issued by the Deputy Commissioner in the communication dated 25.01.2016, but has given other reasons such as nonproduction of lorry receipts, delivery challan etc., Prima facie, the finding rendered by the Assessing Officer is a false statement, since Assessing Officer herself was satisfied that the petitioner has been able to establish a case and that is the reason why she sent a deviation proposal dated 30.10.2015. 3. In the light of the above, there will be an order of Interim stay. Post the matter on 23.06.2016."

7. Pursuant to the above direction, learned Additional Government Pleader has obtained instructions from the respondentDepartment, and from the instructions, it appears that the Deputy 6 Commissioner (CT) Enforcement South, in response to the deviation proposal, has issued a two line order, directing the respondent/Assessing Officer to comply with his communication, dated 21.09.2011. If such communication was sent by the Deputy Commissioner (CT) Enforcement South, the same requires to be deprecated, for the reasons to be mentioned infra. The Deputy Commissioner (CT) Enforcement South, being a Superior Officer, should be in a position to guide the Assessing Officer on legal aspects, rather, in the instant cases, he only seeks to enforce his proposal on the Assessing Officer. This, undoubtedly, cannot be done on an Assessing Officer, because, under the scheme of the Act, the Assessing Officer has to independently apply his mind, and, he cannot be solely guided by any external factors, and, in particular, the report of the Enforcement Wing Officials.

8. The manner, in which, the Assessing Officer has to function, has been pointed by the Hon'ble Division Bench of this Court, in the case of Madras Granites (P) Ltd. Vs. C.T.O., Arisipalayam Circle [(2006) 146 STC 642], and the relevant portion of the decision is quoted hereinbelow:-

> *"It is well settled that the Assessing Officer is a quasi judicial authority and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher*

authorities. However, it is found that in both the matters, the Assessing Officer has acted on the basis of the directions of the higher authority in completing the assessment. We hold that the assessments are not sustainable in law."

9. The said decision was followed by me, in the case of Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri [(2015) 81 VST 560], wherein, it was pointed out that the Assessing Officer cannot be solely guided by the proposals given by the Inspecting Officers, but has to independently apply his mind and discharge duties enshrined on him under the provisions of the Act, otherwise, it would amount to abdication of his statutory duties. However, this Court is not advocating a principle that the report of the Enforcement Wing has to be totally scrapped, and at best, it can be treated only as a material for causing notice on the dealer to clarify 8 certain issues. In the instant cases, it is prima facie clear that the respondent/Assessing Officer is convinced with the explanation/objection/reply offered/filed by the petitioner along with supportive documents, disagreeing with the views expressed by his Superior Officer, and sent a deviation proposal, however, the same having been rejected by the Deputy Commissioner (CT) Enforcement South with directions to comply with the proposal, dated 21.09.2011, the Assessing Officer confirmed the proposal and passed the impugned orders.

10. At the risk of repetition, this Court states that the Assessing Officer, under the Act, has been conferred powers to independently consider the matter, and, at best, the information furnished by the Enforcement Wing, or Inspecting Officer, could be considered to be in the nature of a first information, and based on such information, if the Assessing Officer proposes to issue a show cause notice, then, he is required to call for explanation from the dealer, and then, it is incumbent upon the Assessing Officer to give his/her own independent reasons, and to pass orders, either accepting the case of the dealer, or rejecting it. However, this basic principle, as to how the assessment has to be made, has not been 9 followed in the instant cases, and since the assessment has been made by the respondent/Assessing Officer, blindly accepting the proposal sent by the Deputy Commissioner (CT) Enforcement South, the impugned orders have to be held to be not sustainable, calling for interference."

6.Respectfully following the ratio laid down in the aforesaid decision, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. The matters are remitted to the file of the assessing authority to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// 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:

1.The Deputy Commissioner (CT),
Kumbakonam,Commercial Tax Buildings,
Kumbakonam.

2.The Deputy Commissioner (CT),
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Court Campus, Trichy.

3.The Commercial Tax Officer,
Kumbakonam -II Assessment Circle,
Commercial Tax Buildings,Kumbakonam.

+1 CC to M/s.SPL GP (SR-9163[F] dated 05/03/2021)
+1 CC to M/s.S.KARUNAKAR, Advocate (SR-9350[F] dated 08/03/2021)

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SSS(CO)
TR(30.04.2021) 5P 6C