BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8809 of 2018
and
W.M.P.(MD)No.8244 of 2018

Tvl.Pralcka Engineering Co.,
Represented by its Proprietor,
I.Paulraj. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai 625 020. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33785021207/2015-16 dated 19.03.2018 and quash the same and direct the 2nd respondent to re-do the assessment after giving adequate opportunity.

For Petitioner : Mr.B.Rooban
For Mr.Raja.Karthikeyan.
For Respondents : Mr.S.Dayalan,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a dealer registered with the second respondent. The case on hand pertains to the assessment year 2015-2016. The petitioner's assessment for the said year was finalized under Section 22(2) of the Tamil Nadu Value Added Tax, 2006, on 21.02.2016, they accepted the returns filed by the writ petitioner. Subsequently, there was an inspection of the petitioner's business premises on 08.03.2016. Based on the discrepancies found during the inspection, pre-revision notice dated 16.03.2017 and 02.06.2017 were issued. The petitioner submitted its reply. But the petitioner's defence was rejected in the impugned order on the sole ground that having admitted their lapse before the inspecting officials, the petitioner cannot do somersault during adjudication proceedings. This order is under challenge in this writ petition.

3.The respondents have filed a detailed counter affidavit and the learned Government Advocate for the respondents took me through same and wanted to me sustain the order impugned in the writ petition.

4.Without going into the merits of the matter, the impugned order will have to be set aside for the sole reason that the second respondent has not independently considered the objections and explanations offered by the writ petitioner. The petitioner has been condemned on the strength of admission said to have been made by the writ petitioner before the enforcement wing officials. The learned counsel for the writ 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."*

5.Respectfully following the aforesaid ratio, the order impugned in the writ petition is quashed and the matter is remitted to the file of the second respondent. Since the officer has changed and new person had taken the place of the then assessing authority, the present incumbent is directed to issue personal hearing notice to the petitioner. The petitioner shall appear on the said date without taking any adjournment and place his objections. The assessing officer is directed to consider each one of the objections raised by the petitioner and give reasons. The petitioner's objections or explanations will not be brushed aside on the ground that the petitioner had already admitted before the Enforcement Wing Official.

6.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

// 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 Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT),
West Veli Street Assessment Circle,
Commercial Taxes Complex, Dr.Thangaraj Salai,
Madurai 625 020.

+1 CC to M/s.SPL GP (SR-5885[F] dated 18/02/2021)
+1 CC to M/s.B.ROOBAN, Advocate (SR-6054[F] dated 19/02/2021)

W.P(MD)No.8809 of 2018
17.02.2021

ES(CO)
TR(11.03.2021) 3P 5C