BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021
CORAM:
**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**
W.P.(MD)Nos.9822 to 9824 of 2018
and
W.M.P.(MD)Nos.9024 to 9029 of 2018

M/s.Next IT World,
Rep. by its Managing Partner-S.Kathir Rajan,
No.39, Shabha Plaza,
9th Cross Main Road,
Thillai Nagar, Tiruchirappalli-620 018.
Tiruchirappalli District. ... Petitioner in all W.Ps.

-Vs-

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli,
Tiruchirappalli District. ... Respondent in all W.Ps.

**Prayer in W.P.(MD)No.9822 of 2018**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33463443387/2014-15, dated 26.03.2018 and quash the same as illegal and contrary to the scheme of the Act.

**Prayer in W.P.(MD)No.9823 of 2018**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33463443387/2015-16, dated 26.03.2018 and quash the same as illegal and contrary to the scheme of the Act.

**Prayer in W.P.(MD)No.9824 of 2018**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33463443387/2016-17, dated 26.03.2018 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
for Ms.R.Hemalatha
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
(in all W.Ps.)

**COMMON ORDER**

Heard the learned counsel on either side.

2.The petitioner is a dealer in computer peripherals. He has registered with the respondent as assessee. The assessment years pertain to 2014-15, 2015-16 and 2016-17. The petitioner's assessment was deemed to have been concluded under Section 22(2) of TNVAT Act. While so, the petitioner's place of business was inspected by the Enforcement Wing Officers on 30.07.2016 and 01.08.2016. Certain discrepancies were noticed. Based on the report of the Enforcement Wing Officials, the respondent issued pre revision notices (dated 26.12.2016 for the assessment year 2014-15, dated 19.12.2016 for the assessment year 2015-16 and dated 20.11.2017 for the assessment year 2016-17). The petitioner offered his explanation in response to all the three notices. Thereafter, personal hearing appears to have been given atleast for the assessment year 2015-16 and also for the assessment year 2014-15. The petitioner's stand was rejected and the proposals set out in the show cause notices were confirmed. The impugned orders are put to challenge in these writ petitions.

3.The respondents have filed a detailed reply controverting the stand projected by the petitioner. The learned Special Government Pleader took me through the averments set out in the counter affidavit. Her argument is basically two fold. She would argue that during the personal hearing, the petitioner did not produce any records so as to substantiate his defence. The other defence is that these writ petitions are not maintainable because the petitioner is very much having an alternative remedy of appeal.

4.I carefully considered the rival contentions and went through the three replies submitted by the petitioner in response to the three show cause notices.

5.The petitioner has projected his defence in the replies. Along with the notices, documents have also been enclosed. The petitioner's counsel would further claim that when the personal hearing took place, the documents were produced. But his core argument is that the respondent did not independently apply his mind. The petitioner's counsel would strongly contend that the respondent though a quasi judicial officer chose to go-by the stand of the Enforcement Wing Officials. To test the correctness of the said contention, I went through the manner, in which, the respondent has dealt with the petitioner's objections.

6.The respondent in all the three impugned orders had stated that the Inspecting Officers had verified the relevant records and that they had correctly proved along with recorded evidence and that it was accepted by one Thiru.S.Kathir Rajan, who was the Managing Director of the petitioner entity during the time of inspection. It has been further stated that the Inspecting Officers had verified the purchase and sales and noticed that the return filed by the dealer is incorrect and incomplete. The assessing authority chose to overrule all the objections of the petitioner as untenable in a single line. It is obvious that the respondent has not at all considered the materials from an independent perspective. Of course, the report of the Enforcement Wing can provide a starting point for reopening the assessment. But the assessing authority must have his own approach. His discretion cannot be governed or bound by the stand taken by the Enforcement Wing Officials. In the case on hand, the petitioner had stated that he was coerced into making some admissions at the time of inspection.



7.I am satisfied that the respondent has merely reproduced the stand of the Enforcement Wing Officials and has not dealt with the issue independently. A learned Judge of this Court in ***Amutha Metals Vs. Commercial Tax Officer, Mannady (East), Assessment Circle, Chennai (2007) 9 VST 478 (Mad)*** held that 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. This approach has not at all been adopted in the case on hand. On this sole ground, the orders impugned in these writ petitions are quashed. These Writ Petitions are allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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 Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli,
Tiruchirappalli District.

+1 CC to SPL GP ( SR-8172[F] dated 02/03/2021 )

W.P.(MD)Nos.9822 to 9824 of 2018 and
W.M.P.(MD)Nos.9024 to 9029 of 2018
01.03.2021

VB (11.03.2021) 3P 3C