IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.18445, 18453, 18454, 18457, 18459 and 18461 and 18464 of 2021 and W.M.P. Nos.19685, 19686, 19687, 19690, 19692, 19694 and 19698 of 2021

W.P. No.18445 of 2021:

M/s.Fairy and Foundations Pvt., Ltd.,
Rep. by its Director,
No.24, Velachery Inner Ring Road,
Velachery, Chennai-600 042. ..Petitioner

Vs.

The Assistant Commissioner (ST),
Velachery Assessment Circle,
Chennai-600 035. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the illegal orders of the respondent passed in TIN 33106222344/2007-08 dated 22.07.2021 by directing the respondent to consider the decision of the Madras High Court of the batch case orders in W.P.No.15077 to 15079 of 2012 and others dated 05.08.2020 and also to pass fresh orders by following the circular instructions of the Commissioner of Commercial Taxes in Circular No.3 of 2019 date 18.01.2019 and considering the objections letters filed by the petitioner on 19.10.2020 and 20.07.2021.

For Petitioner in all W.Ps.	: Mr.C.Baktha Sironmoni
For Respondent in all W.Ps.	: Ms.Amritha Dinakaran Government Advocate

COMMON ORDER

All these seven writ petitions relate to challenge of the impugned orders of assessment made pursuant to the directions of this Court in W.P. Nos.15077 to 15079 of 2012 dated 05.08.2020. Originally, the orders of assessment dated 06.05.2012 for the assessment years 2007-08 to 2013-14 were challenged in W.P.Nos.18239 to 18245 of 2015 on the premise that the assessment orders had been made soley on the basis of the audit report / inspection proposals of the Enforcement Wing, that the assessing authorities as a quasi-judicial authority ought to apply its mind independently and cannot permit themselves to be dictated by an external agency. The decision of this Court in the cases of *Madras Granites (P) Ltd., vs. Commercial Tax Officer and Another* reported in *(2006) 146 STC 642 (Mad) and Narasus Roller Flour Mills vs. Commercial Tax Officer (Enforcement Wing), Sankagiri and* another reported in *(2015) 81 VST 560 (Mad)* were relied upon in this regard. This Court was pleased to issue the following directions vide order dated 05.08.2020:

> *"5. .....The assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the assessing officer shall extend the opportunity of personal hearing to the assessee/ representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings, atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the assessing officer shall commence the assessment proceedings, after the expiry of the 30 days indicated above."*

2. Though number of grounds were raised on merits, I do not propose to

examine as it requires close scrutiny / investigation of facts, an exercise which Court would normally exercise restraint while exercising power under Article 226 of the Constitution of India. Hence, I intend to confine myself to the submission that the impugned order is made in disregard and in violation of the direction of this Court in W.P.No.18239 to 18245 of 2015 dated 05.08.2020.

3. It is submitted by the learned counsel for the petitioner that the objections were filed on 19.10.2020 and 20.07.2021. This Court had directed the respondent to extend the opportunity of personal hearing on receipt of the objections. However, the impugned orders of assessment has been made without grant of personal hearing. It is submitted that failure to comply with the directions of this court would prove fatal to the validity of the impugned order of assessment.

4. To the contrary, the learned counsel for the Respondent would submit that the petitioner vide it reply dated 20.07.2021 has submitted that they were not in a position to produce the documents called for such as copies of monthly returns, invoices, trading account and the profit and loss account etc., inasmuch as entire records was destroyed due to the flood in the year 2015. It was submitted that failure to grant of personal hearing would not make any material

difference and thus the challenge to the impugned proceedings may not be sustained.

5. I am afraid the above contention is untenable inasmuch as there is a direction of this Court to grant a personal hearing. On receipt of objections, it would not lie in the mouth of the Revenue to justify its failure to comply with the above direction by suggesting failure to grant personal hearing would not make any material difference to the conclusion. It is trite law that any order which is contrary to the direction of the High Court would be bad for want of jurisdiction. In this regard it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *East India Commercial Co. Ltd. v. Collector of Customs*, reported in *(1963) 3 SCR 338,* wherein it was held as under:

> *"31. ......We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."*

6. At this juncture, the learned counsel for the Respondents would submit that the petitioner may be directed to appear before the Respondent on a particular date, to which the learned counsel for the petitioner would submit that any date 3 weeks hence may be fixed.

7. In view thereof, this Court is inclined to direct the petitioners to appear before the Respondent on 15.12.2023 at 11.30 a.m. along with necessary documents/ submission / objections. The Respondent shall pass orders after considering the documents / objections that may be submitted by the petitioners and after granting an opportunity of hearing. If for any reason the petitioner does not appear on 15.12.2023 at 11.30 a.m. the impugned order of assessment will stand restored.

8. With the above directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mka/ spp

MOHAMMED SHAFFIQ, J.

mka/ spp

To:
The Assistant Commissioner (ST),
Velachery Assessment Circle,
Chennai-600 035.

W.P. Nos.18445, 18453, 18454, 18457, 18459 and 18461 and 18464 of 2021

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