IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.8.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Writ Appeal Nos.1148 & 1149 of 2015
and
M.P.Nos.1,1 and 2 of 2015

Tvl.Nithra Furniture P.Ltd.,
rep.by its Managing Director
Mr.R.Arumugam,
Chennai-32. ...Appellant in both the appeals

Vs

The Assistant Commissioner (CT),
Chrompet Assessment Circle,
Chennai. ...Respondent in both the appeals

APPEALS under Clause 15 of the Letters Patent against the common order in W.P.Nos.15348 and 15349 of 2015 dated 17.6.2015.

W.P.No.15348 and 15349 of 2015 :

Petition presented to this court to issue a Writ of Certiorari calling for the records of the order of the respondent dated 20.03.2015 and 23.03.2015 in TIN No.33410946586/2012-2013 and 2013-2014 respectively and quash the same.

For Appellant : Mr.Aditya Reddy

For Respondent : Mr.Manohar Sundaram, AGP (T)

COMMON JUDGMENT
(Judgment was delivered by V.RAMASUBRAMANIAN,J)

The writ appeals arise out of a common order passed by the learned Judge, dismissing two writ petitions filed by the appellant, on the short ground that the appellant failed to respond to the show causes notices.

2. Heard Mr.Aditya Reddy, learned counsel for the appellant. Mr.Manohar Sundaram, learned Additional Government Pleader (Taxes) takes notice for the respondent.

3. The appellant was issued with two show cause notices dated 12.11.2014 and 10.2.2015 in respect of the assessment years 2012-2013 and 2013-2014, calling upon them to show cause as to why a best of judgment assessment should not be passed and a penalty also levied in terms of Section 22(5) read with Section 63A(2) of the Tamil Nadu Value Added Tax Act, 2006. Unfortunately, the appellant failed to respond to the show cause notices. Therefore, the best of judgment assessment orders came to be passed on 20.3.2015 and 23.3.2015.

4. Thereafter, the appellant filed Form WW along with the auditor's report under Section 63A(1) of the Act. But, the same was rejected by the Assessing Officer by an order dated 18.5.2015 on the short ground that Form WW was filed well beyond the period of 30 days from the date of receipt of the assessment orders and that therefore, the request for revising the assessment orders could not be entertained.

5. Aggrieved by the best of judgment assessment orders as well as the order of rejection of the request for passing revised assessment orders, the appellant filed two writ petitions in W.P.Nos.15348 and 15349 of 2015. Both the writ petitions were dismissed by the learned Judge by an order dated 17.6.2015 on the sole ground that the appellant failed to file reply to the show cause notices. Hence, the appellant has come up with the above appeals.

6. The fact that the appellant failed to respondent to the show cause notices dated 12.11.2014 and 10.2.2015 may justify passing of the best of judgment assessment orders dated 20.3.2015 and 23.3.2015. But, it may not, per se, justify the order dated 18.5.2015 rejecting the request for passing revised assessment orders.

7. If we have a look at the scheme of the Act, it will be clear that what the appellant is obliged to do under the Act, is to file monthly returns and not really the auditor's report. In any case, after the best of judgment assessment orders are passed, the appellant has filed Form WW. The correctness of the particulars reflected in Form WW are not in question. In such circumstances, the rejection of the request for passing revised assessment orders is not in accordance with law. This aspect has not been properly appreciated in the writ petitions.

8. Once the original defect, if at all it was a defect, was cured by the assessee, by filing Form WW, the respondent cannot simply throw the form out on the ground that it was filed beyond the period of limitation. This is especially so when best of judgment assessment orders have been passed by him.

9. In view of the above, the writ appeals are allowed and the common order of the learned Judge is set aside. The order dated 18.5.2015 passed by the respondent is set aside. The matter is remitted back to the respondent for taking on file Form WW filed by the appellant in respect of both the assessment years. The appellant has already paid the penalty. Therefore, the respondent shall accept Form WW and pass orders afresh. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Chrompet Assessment Circle,
Chennai.

1 CC to Mr.Aditya Reddy, Advocate SR.No. 41686

1 CC to the Government Pleader, SR.No. 41913

WA.Nos.1148 & 1149 of 2015
& M.P.Nos.1, 1 and 2 of 2015

NM (CO)
PSI (02.09.2015)