IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.05.2015

CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.A.Nos.760 and 761 of 2015
and
M.P.No.1 of 2015 in W.A.No.760 of 2015
and
M.P.Nos.1 and 2 of 2015 in W.A.No.761 of 2015

Tvl.Tulsi Tiles Pvt.Ltd.,
rep.by its Director
B.Kevalchand Jain ... Appellant in both W.As.

vs

The Assistant Commissioner (CT)
Nolambur Assessment Circle
No.176, M.T.H.Road
Villivakkam, Chennai 600 049. ... Respondent in both W.As.

Prayer : Writ Appeals against the order of this Court dated 18.03.2015 passed in W.P.Nos.7670 and 7671 of 2015.

Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records on the files of the respondent in TIN.33211351477/2012-13 dated 28.1.2015 and TIN.33211351477/2011-12 dated 29.1.2015 and quash the same as being contrary to the principles of natural justice and that of the principle laid down by this Honourable court in the judgment reported in (2007) 295 ITR 303 (Mad) (V.Selladurai Vs.Chief Commissioner of Income Tax (OSD) and another) and further direct the respondent to pass order afresh in accordance with law.

For Appellant in both W.As. : Mr.R.Senniappan

For Respondent in both W.As. : Mr.Kanmani Annamalai
Additional Government Pleader(Taxes)

COMMON JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN,J.,)

By consent, the writ appeals are taken up for final disposal.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and is an assessee on the files of the respondent. Though the monthly returns submitted by the petitioner was accepted by the respondent, they were issued with a notice for revision dated 16.12.2014 under Section 27 of the Act for the assessment years 2011-12 and 2012-13. On receipt of such notices, the petitioner submitted a detailed reply dated 23.12.2014 along with details of purchases and sales statement; statement showing the proof of Value Added Tax paid and the audited balance sheet for the consideration of the respondent and to pass orders in accordance with law. Despite the same, the authority had passed the assessment orders for the assessment years 2011-12 and 2012-13 dated 29.01.2015 and 28.01.2015 respectively assessing the petitioner with tax liability and also imposing penalty under Section 27(3) of the Act. Challenging the same, the petitioner preferred writ petitions, wherein the learned Single Judge agreeing with the contentions raised by the petitioner set aside the impugned assessment orders and while setting aside the impugned orders, the learned Single Judge also directed the petitioner to pay 10% of the disputed tax for each of the assessment years.

3. Aggrieved by the condition imposed with regard to payment of 10% of the determined tax for setting aside the order of the Assessing Authority, the appellant is before this Court in these writ appeals.

4. The learned Single Judge by a common order dated 18.03.2015 has disposed of the writ petitions directing the petitioner to pay 10% of the amount as determined in the impugned orders in respect of the assessment years in question for quashing the same and that on failure on the part of the petitioner to pay the same, it was made open to the Assessing Authority to pass appropriate orders and also by recording the undertaking given by the petitioner that if any adverse orders are passed, they will approach the Appellate Authority instead of seeking indulgence of this Court.

5. Learned Counsel appearing for the appellant submitted that once the assessment order is quashed, there cannot be any condition for depositing of any amount for approaching the authority to file

objections or to agitate their claim, which is unwarranted and onerous. Accordingly, he would pray for setting aside the condition imposed in the order dated 18.03.2015 passed by the learned Single Judge. In this regard, the learned counsel brought to the notice of this Court, the judgment dated 06.03.2015 passed by a Division Bench of this Court in W.A.Nos.211 to 218 of 2015.

6. Heard both sides and perused the materials available on record.

7. We are in full agreement with the judgment passed by the Division Bench of this Court dated 06.03.2015 in W.A.Nos.211 to 218 of 2015 [M/s.Infinity Metal Private Limited rep.by its Director vs. The Commercial Tax Officer, Ponneri Assessment Circle, Chennai 601 204] wherein in para Nos.3 and 4, it has been held as follows:

> "3. The only contention raised by the learned counsel for the appellant before us is that once the writ petition has been allowed and the appellant is permitted to file its objections before the authority concerned and also, the respondent is directed to pass orders, there is no justification on the part of the Writ Court in giving a direction for making a deposit of 5% of the tax amount inasmuch as the question of making any deposit or payment would arise only after fresh assessment is made.
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> 4. In our considered view, the aforesaid submission of the learned counsel for the appellant is justified. Accordingly, the direction issued by the Writ Court regarding deposit of 5% of the tax amount alone is set aside. However, as per the order of the Writ Court, the appellant shall file its objection along with documents, if any, before the respondent within a period of two weeks and on receipt of the same, the respondent is directed to consider the same independently and after giving opportunity of hearing, shall pass orders afresh, on merits and in accordance with law, as expeditiously as possible and not later than four weeks from the date of receipt of the objections."

8. In yet another decision in W.A.(MD)Nos.1165 to 1167 of 2014 dated 24.09.2014 [Vaigai Impex rep.by its Proprietor S.Muthumohan vs. The Assistant Commisisoner (CT), Thallakulam Assessment Circle, Madurai-20], the Madurai Bench of the Madras High Court has held as follows:

> "10. Once the Court finds the assessment order to be illegal and decides to set aside the same, there cannot be

imposition of any condition. Such a condition is unwarranted. The levy and collection of tax must be under the four corners of law. Just because, the assessee can later claim a refund, they cannot be directed to deposit any amount unless there is any liability. Since the matter has been remitted back rightly after the order has been set aside, in the considered opinion of this Court, the pre-condition directing the appellant to deposit Rs.15,00,000/- is unsustainable and that portion of the order is liable to be set aside."

9. Following the same, the condition imposed in these matters, by the learned Single Judge, to deposit 10% of the determined tax amount alone for the assessment years in question, is set aside. However, the appellant shall file its objection before the authority concerned along with their documentary evidence within a period of three weeks from the date of receipt of a copy of this order and the respondent upon receipt of the same, shall consider and pass appropriate orders on merits and in accordance with law within a period of four weeks, thereafter.

10. The writ appeals are allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(ADM II)/
Vacation Officer

//True Copy//

Sub Assistant Registrar

vj2

To

The Assistant Commissioner (CT)
Nolambur Assessment Circle
No.176, M.T.H.Road
Villivakkam, Chennai 600 049.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.25365
+1cc to the Special Government Pleader(Taxes), S.R.No.25307

W.A.Nos.760 and 761 of 2015

VD(CO)
CA(28/05/2015)