IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1663 of 2015 and M.P.No.1 of 2015

ALD Automative Private Limited
rep. By its
Exective, Taxation Sri B.R.Babu,
No.861/862, Annasalai,
Chennai - 600 002 .. Petitioner

.vs.

Assistant Commissioner (CT),
Vadapalani Assessment Circle,
No.1, Greams Road,
Chennai - 600 006 .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN No.33981463719/2013-14 dated 08.12.2014 and quash the same.

For Petitioner :Mr.R.Raghavan
For Respondent :Mr.Manoharsundaram, A.G.P.(Tax)

O R D E R

Writ petition has been filed against the assessment order dated 08.12.2014.

2. One of the grounds taken by the petitioner is that he has got time to file the writ appeal in Form WW till 31st December and before completion of that period, the authority has passed the order in October itself. The learned counsel for the petitioner drew the attention of this court to section 63-A of the Tamil Nadu Value Added Tax Act, 2006 and Rule 16-A of the Tamil Nadu Value Added Tax Rules, 2007 which are extracted below and submitted that before the end of the year within which the petitioner is entitled to file the form WW, the assessment order has been passed which is the subject matter of this writ petition. The petitioner further submitted that he has already submitted his objection and sent the same by courier which has not been considered by the respondent.

3. Per contra, learned counsel for the respondent submitted that in terms of section 63-A of the said Act, the petitioner ought to have audited the accounts and submitted the report within the

period prescribed. Hence, an opportunity was given but, the petitioner did not utilise the same and after an adverse order has been passed, he has filed the present writ petition questioning the impugned order.

4. Heard both sides.

5. Section 63-A of the Act reads thus:-

> "Accounts to be audited in certain cases--(1) Every registered dealer whose total turnover including zero-rate sale and sale in the course of inter-State trade or commerce as specified in Section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the assessing authority, within such period as may be prescribed.
>
> Explanation -- For the purpose of this section "Accountant" means, a chartered accountant as defined in the Chartered Accountants Act, 1949 (Central Act 38 of 1949) or a cost accountant as defined in the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959).
>
> (2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of sum of rupees ten thousand, in addition to any tax payable, in respect of the said period."

Rule 16-A of the said Rules reads thus:-

> "Procedure for filing Audit Report-- (1) Every registered dealer liable to get his account audited as per sub-section (1) of Section 63-A shall furnish the audit report in Form-WW within nine months from the end of the year in duplicate.
>
> (2) The notice for levy of penalty will be issued in Form-RR."

6. A reading of section 63-A of the said Act and Rule 16-A makes it clear that the respondent will have to wait till the expiry of the period. Even though the petitioner has prayed for grant of interim order, I find that there is no purpose in keeping the writ petition pending and as the petitioner has got time limit

till 31st December, and his turnover is more than rupees one crore as mentioned in Section 63-A for which time limit has been given upto 31st December in the aforesaid rule.

7. In view of the same, the petitioner is directed to appear before the authority concerned on 20th February 2015 and it is open to the petitioner to make necessary submissions verbally as well as in writing and the authority may consider the same and pass orders on merits within a period of four weeks thereafter.

The Writ Petition is disposed of in the aforesaid terms. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

Assistant Commissioner (CT),
Vadapalani Assessment Circle,
No.1, Greams Road,
Chennai - 600 006

+ 1 cc to the Special Government pleader Sr.4573

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ALA(CO)
Eu 17.02.15