IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.30435 & 30436 of 2015
and
M.P.Nos.1 of 2015

Aaliyah Textiles,
Rep. by its Proprietor,
P.A.Aejaz Ahamed,
No.8/12, Indira Gandhi Road,
Chennai 600 043. ...Petitioner in both WPs

-Versus-

The Assistant Commissioner (CT),
Pallavaram Assessment Circle,
Plot No.32 & 33, Sripuram 2nd Street,
Thiruneermalai Road, Chromepet,
Chennai 600 044. ...Respondent in both WPs

Prayer in W.P.No.30435 of 2015: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent passed in TIN /33900887098/12-13 dated 28.08.2015 and to quash the same and for a further direction to the respondent to complete the assessment in accordance with law.

Prayer in W.P.No.30436 of 2015: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent passed in TIN /33900887098/13-14 dated 28.08.2015 and to quash the same and for a further direction to the respondent to complete the assessment in accordance with law.

For Petitioner : Mr.N.Murali for petitioner in both WPs

For Respondent : Mr.S.Manoharan Sundaram, AGP (T) for respondent in both WPs

COMMON ORDER

Challenging the provisional orders of assessment passed by the respondent on 28.08.2015 relating to the assessment year 2012-13 and 2013-14 respectively, the petitioner has come forward with these writ petitions.

2. The petitioner in both the writ petitions is one and the same with a common issue. Thus, by consent, the writ petitions themselves are taken up for final disposal, heard together and they are disposed of by this common order.

3. The petitioner is a registered trader on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act) and he is engaged in trading textiles and redymades. The petitioner has been regularly filing returns and making payment of VAT. While so, alleging that the petitioner has crossed the turnover above one crore for the year 2012-13 and he has failed to file Form WW along with other relevant documents, the respondent issued a notice and ultimately, passed the impugned orders imposing higher rate of tax and penalty. According to the petitioner, mere failure to file Form WW cannot be a ground to disallow the exemptions claimed and reversal of ITC and the tax can be levied only on the basis of the merits of the transaction concerning with the issue. Thus, challenging the impugned order, the petitioner is now before this court with this writ petition.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader, for the respondent.

5. No doubt, Section 63-A of the Tamil Nadu Value Added Tax Act, 2006 empowers the authority to levy penalty for the belated submission of Form-WW. Accordingly, the petitioner has also paid the penalty amount. Now, the petitioner is inclined to file Form-WW for the purpose of completing the assessment in question relating to the turn over available in Form WW.

6. The learned counsel appearing for the petitioner submitted that Form WW is very much available and the petitioner is ready to place before the authority within a time frame to be fixed by this court. The said submission is recorded.

7. The learned Additional Government has got no serious objection for the same.

8. Since the petitioner has already paid penalty amount as contemplated under the provision of the Tamil Nadu Value Added Tax Act, 2006, this court is inclined to set aside impugned order and remit back the matter for fresh consideration with certain conditions.

9. In the result, the writ petition is disposed of. The impugned order is set aside and the matter is remitted back to the respondent for passing appropriate orders afresh. The petitioner is permitted to produce Form WW within a period of two weeks from the date of receipt of a copy of this order. On such filing, the same shall be considered and necessary orders be passed on merits and in accordance with law after giving due opportunity to the petitioner within a period of two weeks thereafter. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Pallavaram Assessment Circle,
Plot No.32 & 33, Sripuram 2nd Street,
Thiruneermalai Road,
Chromepet, Chennai 600 044.

1 CC to Mr.N.Murali, Advocate SR.No. 58845

1 CC to the Government Pleader, SR.No. 59174

Writ Petition
Nos.30435 & 30436 of 2015

LRS (CO)
PSI (06.11.2016)