IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.34318 of 2015

and

M.P.No.1 of 2015

S.K.S.Industries,
rep. by its Proprietor,
T.Muruganandham,
No.700/3, Ramarkovil Street,
R.G.Pudur, Chinniampalayam,
Coimbatore - 641 062. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Peelamedu North Circle,
Coimbatore. ... Respondent

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the respondent in TIN No.33732124475/2015-16, dated 06.10.2015, and connected proceedings in TIN No.33732124475/2012-13, dated 26.11.2013, and to quash the same as being without jurisdiction and authority of law insofar as the assessment related to the year 2012-13 is concerned.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.V.Haribabu
Additional Government Pleader (T)

O R D E R

This Writ Petition is filed, seeking for issuance of Writ of Certiorari, to quash the proceedings bearing TIN No.33732124475/2012-13, dated 26.11.2013, passed by the respondent.

2. The petitioner is an assessee on the file of the respondent herein. For the assessment year 2012-13, respondent has passed a provisional assessment order, dated 26.11.2013, under Section 25 of the TNVAT Act. Since there were certain errors apparent on the face of the records in the said provisional assessment order, the petitioner has filed a Petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, dated 31.12.2013, seeking rectification of the defects pointed out therein. Since no orders have been passed in the said Petition, the petitioner made a representation, dated 31.01.2014, which was followed by reminder, dated 18.03.2014, requesting the respondent to pass orders afresh in accordance with provisions of TNVAT Act, 2006. Pending consideration of the said Petition, the petitioner also requested the respondent not to proceed with the assessment proceedings. But the respondent, without passing any orders on the Petition filed under Section 84 of the said Act, has issued a notice, dated 06.10.2015, stating the dealer (petitioner) is having arrear for Rs.29,26,283 for the assessment year 2012-13. Hence, the petitioner has filed this Writ Petition, seeking to quash the provisional assessment order, dated 26.11.2013, and the consequential notice/certificate, dated 06.10.2015.

3. The bone of contention of the learned counsel for the petitioner is that the provisional assessment order passed by the respondent is un-sustainable, as the same was passed after the expiry of the assessment year 2012-13. It is his further submission that, since the assessment year itself was over, there is no point in pressing for orders in the Petition filed under Section 84 of the said Act. Hence, the learned counsel submitted that the impugned order, dated 26.11.2013, may be set aside and a direction may be issued to the respondent to take into consideration of the entire assessment proceedings afresh and to pass orders, after affording an opportunity of personal hearing to the petitioner, as the same would meet the ends of justice.

4. The learned counsel appearing for the respondent has no serious objection in adopting such course.

5. In view of the above, the Writ Petition is allowed, and the impugned order, dated 26.11.2013 is set aside, and the matter is remitted to the respondent for passing orders afresh for the assessment year 2012-13. Since the order under challenge, is only a provisional assessment order, the respondent is directed to issue fresh notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner is directed to file his objection together with supportive documents, within 15 days, which shall be considered by the respondent and after affording opportunity of personal hearing to the petitioner, the respondent shall pass appropriate orders

on merits and in accordance with law, within a period of six weeks thereafter, No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT) (FAC)
Peelamedu North Circle,
Coimbatore.

+2 ccs to Mr.R.Senniappan, Advocate sr.67458
67791
+1 cc to Special Government Pleader taxes vide
sr.67582

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