IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

WP.No.9332/2015 &
MP.No.1/2015

Tvl.Gemini Traders rep. by its
Proprietor Tmt. S.Sumathi .. Petitioner

Versus

The Deputy Commercial Tax Officer
Cuddalore Town Assessment Circle
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam
Cuddalore 607 001. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records in respect of the impugned order Assessment Order TIN No.33604381688/2013-14 dated 10.02.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006 and quash the same.

For Petitioner : Mr.S.P.Asokan
Adithya Reddy

For Respondent : Mr.Manoharan Sundaram, AGP [Taxes]

ORDER

Heard Mr.S.P.Asokan, learned counsel appearing for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader [Taxes] accepting notice for the respondent and with their consent, the writ petition is disposed of at the admission stage itself.

2.The petitioner has filed this writ petition seeking to quash the order of the respondent dated 10.02.2015 made in the Assessment Order TIN No.33604381688/2013-14.

3. It is the case of the petitioner that a notice dated 12.01.2015 was issued stating that the petitioner has not filed the monthly returns in Form I-1 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 2006 Act) and hence, they are now propose to assess tax under Section 22(4) of the 2006 Act and the petitioner was given 15 days time to produce the documents failing which, it was stated that order would be passed. Pursuant to the same, the petitioner had submitted a reply on 03.02.2015, which has been received and acknowledged by the respondent.

4.Admittedly notice dated 12.01.2015 was issued to the petitioner stating that the petitioner had not filed monthly returns in Form I-1 under the 2006 Act, and hence they proposed to assess tax under Section 22(4) of the 2006 Act and the petitioner was given fifteen days time to produce the documents, failing which order would be passed. It is also not disputed that the petitioner had submitted a reply on 03.02.2015, which has been received and acknowledged by the respondent, as could be seen from the impugned notice dated 10.02.2015. The respondent without considering any of the objections mentioned therein, straight away passed an order for the assessment year 2013-2014. However, the learned counsel for the petitioner submitted that the petitioner is willing to pay 10% of the tax amount as demanded in the impugned order within a stipulated time.

5.Learned Additional Government Pleader (T) submitted that the petitioner ought to have filed the objections on or before 20.05.2014 but they have filed the objections only on 03.02.2015. It is also contended that the petitioner has got a right of appeal before the Appellate Deputy Commissioner (CT), Cuddalore.

6.There is no need for issuance of notice dated 12.01.2015 if the petitioner had filed Form I-1 on or before 20.05.2014. Since it has not been filed, notice has been issued, objections have been called for and thereafter, orders have been passed on 10.02.2015. When the objections have been received as early as on 06.02.2015. the same has got to be considered by the authorities and hence the observations made with regard to this fact in the impugned order is not correct. Hence, this court is of the view that the impugned order is not sustainable in law.

7. In the result, the impugned order is set aside and the matter is remanded to the authority concerned for passing orders afresh by taking into account the objections dated 03.02.2015. The respondent is directed to accept 10% of the tax amount as determined in the impugned order, which the petitioner has agreed to pay the same on or before 30.04.2015. On receipt of the said amount, the respondent is directed to give an opportunity of

personal hearing to the representative of the petitioner as provided under Section 22(4) of the Act and decide the matter afresh on merits and in accordance with law.

8. The learned counsel for the petitioner also agreed that the representative of the petitioner would appear before the respondent on 05.05.2015 for personal hearing. After hearing the representative of the petitioner on 05.05.2015, the respondent is directed to decide the matter on merits and in accordance with law. In case the representative of the petitioner Company fails to avail this opportunity on 05.05.2015, the authority is empowered to pass orders afresh on merits and in accordance with law based on the available records.

9.This writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

smi

To

The Deputy Commercial Tax Officer
Cuddalore Town Assessment Circle
1, Commercial Taxes Buildings,
Sub Jail Road, Manjakuppam
Cuddalore 607 001.

1 cc to Spl.Government pleader (T), Sr. 18243
1 cc to Mr.S.P.Asokan, Advocate, Sr. 18138

WP.No.9332 of 2015

TS (CO)
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