IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.31876 to 31878 of 2015
and M.P.Nos.1 to 1, 2 to 2 and 3 to 3 of 2015

M/s.Salila Auto Fuels,
Pandakkal, Mahe,
Pondicherry State
rep. by its Prop. N.K.Sundaram ..Petitioner in all W.Ps

Vs

1.Union of India
rep.by Union Territory of
Pondicherry through the
Chief Secretary,
Government of Pondicherry,
Pondicherry.

2.Commercial Tax Officer, Mahe
Pondicherry State.

3.The Territory Manager,
Kozhikode Territory Office,
Bharat Petroleum Corporation Ltd.,
Kozhikode. .. Respondents in all W.Ps

Prayer in W.P.No.31876 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent TIN:34180006863/2008-2009 dated 20.04.2015 and the consequential proceedings in No.34180006863/2015-16/842 dated 04.09.2015 addressed to the third respondent and consequently forbear the respondents 1 and 2 from in any manner interfering with the business of the petitioner with the third respondent by means of stopping the supply of the petitioner from the third respondent.

Prayer in W.P.No.31877 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in PGST.No.502243/2007 to 2008 dated 20.04.2015 and the consequential proceedings in No.34180006863/2015-16/842 dated 04.09.2015 addressed to the third respondent and consequently forbear the respondents 1 and 2 from in any manner interfering with the business of the petitioner with the third respondent by means of stopping the supply of the petitioner from the third respondent.

Prayer in W.P.No.31878 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent TIN:34180006863/2007-2008 dated 20.04.2015 and the consequential proceedings in No.34180006863/2015-16/842 dated 04.09.2015 addressed to the third respondent and consequently forbear the respondents 1 and 2 from in any manner interfering with the business of the petitioner with the third respondent by means of stopping the supply of the petitioner from the third respondent.

For Petitioner
in all W.Ps : Mr.K.Jotheeswaran

For Respondents
in all W.Ps : Mrs.Veena Ishwariya
Additional Government Pleader
(For R1 & R2)

COMMON ORDER

Heard Mr.K.Jotheeswaran, learned counsel appearing for the petitioner and Mrs.Veena Ishwariya, learned Additional Government Pleader appearing for the respondents 1 and 2 and with their consent, these writ petitions are taken up for disposal.

2.The petitioner is a chronic defaulter as he has failed to pay the sales tax inspite of indulgence granted by this Court in the earlier round of litigation. The petitioner had filed a writ petition before this Court in W.P.No.25583 of 2009 challenging the order dated 02.12.2009 by which the petitioner was directed to pay tax and penalty under the provisions of the erstwhile Pondicherry Value Added Tax Act. This Court considered the submissions made and directed the petitioner to submit their objections before the authority and the authority was directed to take note of the objections and pass orders on merits and in accordance with law. This direction was issued as in the said order dated 02.12.2009 the respondent had taken a provisional decision to cancel the petitioner's registration. It is unfortunate that the petitioner did not comply with the direction issued by the Court and taken advantage of only the observation made in the order that coercive action should not be taken against the petitioner for demanding tax or penalty. Thus the conduct of the petitioner has to be thoroughly deprecated.

3.In these cases, the petitioner has challenged the assessment order for the years 2007-08 and 2008-09 and the consequential proceedings dated 04.09.2015 by which the second respondent has intimated the third respondent that the petitioner is due and payable to the Department a total sum of Rs.225,54,472/-.

4.After elaborately hearing the parties and carefully perusing the materials placed on record, it is seen that the petitioner has defaulted in payment of tax from the assessment year 2007-08 onwards.

5.The learned counsel appearing for the petitioner pleads that though the petitioner wanted to file an appeal against the assessment orders and entrusted the same to the Advocate, but the same was not filed and the said Advocate is also not traceable. Therefore, the petitioner pleaded that they may be permitted to file an appeal. This submission made by the petitioner is not substantiated by any record and therefore, this Court is not inclined to believe the stand taken by the petitioner. However, considering that the interest of revenue should also be protected and no useful purpose would be served if the petitioner is left at the same position, this Court is inclined to issue following directions.

6.Out of the total amount of Rs.225,54,472/- the amount of tax is Rs.71,88,050/- and the balance amount of Rs.153,66,422/- is the penalty. In order to afford an opportunity to the petitioner, they should be put on condition especially taking note of their conduct which has been deprecated in the preceding paragraph. Accordingly, there will be a direction to the petitioner to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) within a period of eight weeks from the date of receipt of a copy of this order. If such payment is effected, then on the same date, the petitioner is entitled to submit their objections by treating the impugned assessment orders dated 20.04.2015 for the period 2008-09, 2007-08 and 2007-08 as a show cause notice and the petitioner is entitled to file their objections to the same. On objections being filed, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner and complete the assessment in accordance with law within a period of fifteen days from the date on which the personal hearing is concluded. It is made clear that the petitioner should co-operate in the finalization of the assessment proceedings. In the event, the petitioner fails to pay the amount as directed by this Court within the time permitted, the benefit of this order will not enure to the petitioner and the writ petitions would stand automatically dismissed without further reference to this Court.

7.With the above direction, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse
To

1.The Chief Secretary, Union of India Union Territory of
Pondicherry through the
Government of Pondicherry, Pondicherry.

2.Commercial Tax Officer, Mahe
Pondicherry State.

3.The Territory Manager,
Kozhikode Territory Office,
Bharat Petroleum Corporation Ltd.,
Kozhikode.

+ 1 cc to Mr.K.P. Jatheeswaran, Advocate Sr.41345
+ 1 cc to The Government Pleader Sr.41679, 41677 & 41676

W.P.Nos.31876 to 31878 of 2015
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VD(CO)
EU 16.08.16