IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.21159 & 21160 of 2016
and
W.M.P.Nos.18096 & 18097 of 2016

M/s.Lakshmi Motors
Rep by its Proprietor
Mr.K.Prakash
V.K.P.Complex
Main Road
Thirumakkottai
Mannargudi Taluk
Tiruvarur District ... Petitioner in both the WPs

..Vs..

The Commercial Tax Officer (FAC)
Mannargudi Assessment Circle
Mannargudi
Tiruvarur District ... Respondent in both the WPs

Prayer in W.P.No.21159 of 2016:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33443863602/2013-2014 dated 15.04.2016 and quash the same as illegal, arbitrary and against the provisions of the Act.

Prayer in W.P.No.21160 of 2016:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33443863602/2014-2015 dated 15.04.2016 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner
in both WPs : Mr.K.Soundararajan

For Respondent
in both WPs : Mr.S.Kanmani Annamalai, A.G.P.,

COMMON ORDER

Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent of the either side, the writ petitions are taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) on the file of the respondent. The challenge in these writ petitions are the assessment orders for the years 2013-14 and 2014-15. A field audit was conducted in the place of business of the petitioner during which the petitioner's father Mr.V.Karunanithi was present and it appears that the enforcement wing officials have recorded the statement from him and also collected the compounding fee.

3.Based on the field audit report, notices were issued to the petitioner on 15.03.2016, proposing to revise the turn-over for the relevant years. However, due to ill health the petitioner did not submit his reply and he has enclosed a medical certificate issued by the Orthopaedic Surgeon stating that he was advised complete bed rest from 05.04.2016 to 30.06.2016. The petitioner would contend that the impugned orders of assessment are solely based upon the field audit report submitted by the enforcement wing officials and prays that an opportunity may be granted to the petitioner to submit their objections.

4.Considering the peculiar facts and circumstances of these cases, this Court is of the view that the petitioner can be afforded an opportunity to put forth his objections, subject to certain conditions. Accordingly, the petitioner is directed to pay 15% of the tax demanded for both the assessment years within a period of three weeks from the date of receipt of a copy of this order. If the petitioner remits the same, then the petitioner will be entitled to treat the impugned assessment orders as show cause notices and he is at liberty to file his objections, while effecting payment of 15% of the tax demanded for both the assessment years.

5.In the event of petitioner complying with both the conditions, the respondent shall consider the objections, afford an opportunity of personal hearing and thereafter, proceed to complete the assessment in accordance with law. In the event, the petitioner does not comply with the conditions of payment of 15% of the tax demanded for both the assessment years within the three weeks period stipulated by this Court, the benefit of the order will not enure to the petitioner and the writ petition will be dismissed automatically.

6.However, it is open to the petitioner to invoke the appellate remedy provided under the Act, as against the impugned orders of assessment. Since this Court has directed the impugned assessment orders to be treated as show cause notices, subject to compliance of the conditions imposed, the question of enforcing the demand made in the impugned orders of assessment would not arise, till the orders are passed by the respondent in terms of the above direction.

7.These writ petitions are disposed of with the above directions. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Commercial Tax Officer (FAC)
Mannargudi Assessment Circle
Mannargudi
Tiruvarur District

2 cc to Mr.K. Sundararajan, Advocate, Sr. 34603
1 cc to Spl. Government Pleader, Sr. 34865

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