IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No. 26926 of 2016
and W.M.P.No.23152 of 2016

M/s.GTR Exports
represented by its Partner
No.482/2, Achettypalli
Kelamangalam Road
Hosur. ..Petitioner

-Vs-

1.The Assistant Commissioner (CT)
Hosur (South) Hosur.

2.The Deputy Commissioner (CT)
Dharmapuri.

3.The Commercial Tax Officer (CT)
Hosur (South)
Hosur. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in communication, dated 22.04.2016, in Na.Ka. No. 1891/2-14/Aa3 and quash the same and to direct the 3rd respondent to accept the statutory forms along with the petitioner's representation, dated 25.07.2016 and pass further orders as this Court may deem fit and proper in the circumstances of the case.

For petitioner : Mr.Adithya Reddy

For respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice for the respondents and with the consent of learned counsel appearing on either side, this Writ Petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the 1st respondent under the provisions of the Central Sales Tax Act (CST Act), has challenged the recovery action initiated by the respondents for recovering tax and penalty as assessed on the petitioner for the four years, viz., 2006-2007, 2008-2009, 2010-2011 and 2011-2012.

3. The learned counsel for the petitioner would fairly admit that the assessments were completed by the Assessing Officer, viz., the 3rd respondent, only because the petitioner did not produce the C-Forms. Thus, it is clear that on account of the mistake committed by the petitioner, the assessments had to be completed by the Assessing Officer in the manner done in the orders, dated 24.08.2011, 05.09.2013, 04.11.2013 and 30.01.2014. The petitioner has woken up only after the impugned communication was sent to the petitioner proposing to conduct auction to bring the petitioner's property for sale for recovery of the tax dues. Immediately, the petitioner on 25.07.2016 has filed a representation under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), enclosing certain C-Forms. According to the petitioner, 75% of the C-Forms, which the petitioner was required to submit have been submitted along with the representation, dated 25.07.2016.

4. The learned counsel for the petitioner referred to the decision of the Hon'ble Full Bench of this Court in the case of State of Tamil Nadu vs. Arulmurugan and Company, reported in [1982] 51 STC 381 (Mad), wherein, the Hon'ble Full Bench has held that even if the dealer fails to explain the reason for the delay in submission of the C-Forms, the Assessing Officer has to independently apply his mind and decide about the C-Forms, without insisting the onus on the assessee. Further, the learned counsel referred to a Circular issued by the Commissioner of Commercial Taxes, which was in fact issued on the above lines, pursuant to the decision of the Hon'ble Full Bench (cited supra). Reliance was also placed to the decision of this Court in the case of Audio People vs. Commercial Tax Officer, Pondy Bazaar Assessment Circle, reported in MANU/TN/0680/2016, which was rendered following the decision of the Hon'ble Full Bench in the case of State of Tamil Nadu vs.Arulmurugan and Company (cited supra).

5. The legal position is not in dispute, as it has been settled that a liberal approach should be adopted by the Assessing Officer while C-Forms are submitted belatedly by the dealer. However, in the instant case, the Assessing Officer cannot be blamed because the petitioner defaulted in producing the C-Forms. If it is the case of the petitioner that he produced the C-Forms and for some reason, the Assessing Officer rejected the same, then the decision of the Hon'ble Full Bench

in the case of State of Tamil Nadu vs.Arulmurugan and Company or the decision of this Court in the case of Audio People vs. Commercial Tax Officer (cited supra) can be pressed into service. However, on account of the conduct of the petitioner, these decisions are of little assistance to the case of the petitioner.

6. Be that as it may. Now the petitioner has realised his mistake and has enclosed the C-Forms, which according to the petitioner covers 75% of the transaction. Therefore, before bringing the property of the petitioner for sale, the respondents should be directed to consider the petitioner's representation, dated 25.07.2016 filed under Section 84 of the TNVAT Act, 2006. Accordingly, there will be a direction to the 3rd respondent to consider the petitioner's representation, dated 25.07.2016, filed under Section 84 of the TNVAT Act, 2006, along with the C-Forms enclosed in the said representation, and appropriate orders of revised assessment shall be passed, on merits and in accordance with law, within a period of two weeks from the date of copy of this order. Till then, the impugned order distraint proceedings shall be kept in abeyance. After the passing of such order, as per the above direction, the petitioner should remit the balance amount of tax and penalty as assessed on the petitioner for the transactions where the C-Forms were neither produced or rejected or returned, on valid grounds. This payment should be effected within a period of three weeks from the date on which the revised assessment order is passed in terms of the above direction. If the petitioner fails to remit the same, the respondents are permitted to proceed further with the impugned distraint proceedings.

7. With this observation, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT)
Hosur (South) Hosur.

2.The Deputy Commissioner (CT)
   Dharmapuri.

3.The Commercial Tax Officer (CT)
   Hosur (South), Hosur.

+1cc to Mr.Adithya Reddy, Advocate Sr.43580
+1cc to the Special Government Pleader Sr.43858

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ctk[co]
srg 03/08/2016