IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27058 of 2016
and W.M.P.Nos.23239 & 23240 of 2016

Tvl.Morgan Industries Ltd.,
Rep. By its Executive Director,
Thiru P.S.Bhaskaran,
No.C-2 SIPCOT Industrial Estates,
Cuddalore - 607 005 .. Petitioner

Vs.

1. The Special Committee constituted under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959,
   Rep. By the Principal Secretary / Commissioner of Commercial Taxes,
   Ezhilagam, 1st Floor, Chepauk, Chennai 600 005.

2. The Assistant Commissioner (CT),
   Cuddalore Taluk, Commercial Taxes Buildings,
   Cuddalore - 607 001 .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to SCP No.1 of 2016, Ref No.M1/3608/2015, dated 16.06.2016, passed by the first respondent herein, quash the same and to consequently direct the first respondent to re-hear the petitioner, on merits.

For Petitioner : Mr. Adithya Reddy

For Respondents: Mr. S.Kanmani Annamalai, AGP.,

O R D E R

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents. By consent of the learned counsel for both sides, the Writ Petition is taken up for final disposal, at the admission stage itself.

2. The petitioner-Industry, which is a registered dealer on the file of the second respondent, has filed this writ petition, challenging the order, dated 16.06.2016, passed by the first respondent, which is a Special Committee constituted under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959. For the relevant assessment years 2000-01 and 2006-07, though the petitioner received pre-assessment notices did not file replies to the said notices, the assessments were completed by the second respondent, exparte, on 18.05.2011. The petitioner could have filed a statutory appeal, as against the assessment orders, but chose to approach the Special Committee and filed applications under Section 16-D of the said Act, challenging the orders of assessment.

3. In the meantime, since destraint proceedings were initiated, the petitioner has approached this Court and filed writ petitions in W.P.Nos.27357 and 27358 of 2015, which were disposed of, by orders, dated 07.09.2015 directing the Special Committee to consider the petitioner's applications and till orders are passed, recovery proceedings initiated by the second respondent were directed to be kept in abeyance. Now the Special Committee has passed an order, which is impugned in this writ petition.

4. On a perusal of the impugned order, it is seen that the Special Committee only examined as to whether, there was any violation of principles of natural justice and on facts, found that the petitioner was guilty of non-pursuing the matter and further the merits of the matter were not gone into.

5. In my view, the petitioner can be permitted to contest the matter on merits, subject to certain conditions, because the Special Committee did not go into the correctness of the orders of assessment on merits.

6. From the notice, dated 25.07.2016, of the second respondent, it is seen that the total amount of tax due and payable by the petitioner is Rs.53,52,990/- for the assessment year 2000-01 and Rs.24,88,185/- for the assessment year 2006-07 and in all Rs.78,41,175/-. Thus, considering the peculiar facts and circumstances of the case, this Court is inclined to afford one more opportunity to the petitioner to contest the matter on merits, subject to the condition that the petitioner deposits 50% of the disputed tax, i.e., 50% of Rs.78,41,175/- within four weeks from the date of receipt of this order. If the petitioner deposits the same, the petitioner will be entitled to file appeal(s), as against the orders of assessment, dated 18.05.2011 and 20.05.2011, (for both the assessment years) before the appellate authority, within a period of thirty days from the date of payment of 50% of the

disputed tax. On such appeal(s) being filed, the appellate authority, shall not insist upon any further conditions or pre-deposit, apart from the conditions imposed by this Court, and shall consider the appeal on merits and in accordance with law.

7. This writ petition is disposed of accordingly. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Special Committee constituted under,
Section 16-D of the Tamil Nadu General,
Sales Tax Act, 1959,
Rep. By the Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, 1st Floor, Chepauk, Chennai 600 005.

2. The Assistant Commissioner (CT),
Cuddalore Taluk, Commercial Taxes Buildings,
Cuddalore - 607 001.

3. The Appellate Authority (CT),
Cuddalore Region.

+1cc to the Special Government Pleader Sr.44444

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srg 24/08/2016