In the High Court of Judicature at Madras

Dated : 10.8.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.27914 to 27921 of 2016
& WMP.Nos.24086 to 24093 of 2016

Tvl.Saravana Construction, rep.
by its Proprietrix K.Thenammal ...Petitioner in all WPs

Vs

1.The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Chennai-81.

2.The Branch Manager, Allahabad
Bank, Chennai-81. ..Respondents in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent in TIN.33451202450/2007-08, TIN. 33451202450/2008-09, TIN.33451202450/2009-10, TIN.33451202450/ 2010-11, TIN.33451202450/2011-12, TIN.33451202450/2012-13, TIN. 33451202450/2013-14 and TIN.33451202450/2014-15 dated 29.4.2016 respectively and quash the same.

For Petitioner in all the WPs : Mr.R.Senniappan
For Respondent-1 in all the WPs : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the first respondent. Heard both. In view of the nature of direction this Court proposes to issue, the writ petitions are taken up for final disposal without ordering notice to the second respondent.

2. The petitioner is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. In all these writ petitions, the petitioner challenges the orders of assessment dated 29.4.2016 for the assessment years 2007-08 to 2014-15.

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3. The only ground, on which, the impugned orders have been challenged is by contending that the pre-assessment notices dated 28.3.2016 were not served on the petitioner.

4. Earlier, the petitioner approached this Court and filed W.P.No. 23676 of 2016 challenging the proceedings of the first respondent dated 21.6.2016. The said proceedings dated 21.6.2016 was a notice issued to the Branch Manager of the Allahabad Bank, which is one of the petitioner's bankers, to attach the petitioner's bank account. This Court, after taking into consideration the fact that the first respondent herein directly addressed the petitioner's bankers and that the Enforcement Wing recorded a statement from the petitioner that a sum of Rs.30,85,870/-, being the TDS amount, was deducted and during inspection by the Enforcement Wing, the petitioner paid a sum of Rs.1 lakh as per the orders of the officials of the Enforcement Wing, liberty was granted to the petitioner to file their objections.

5. Subsequently, the petitioner sent a representation to the first respondent on 18.7.2016 stating that she is not able to effectively give a reply to the notice dated 21.6.2016, since no details were furnished. The petitioner further requested the first respondent to furnish a copy of the notice as well as the orders of assessment in respect of the years 2007-08 to 2014-15. In reply to the said communication, the first respondent has taken a categorical stand that the pre-assessment notices were served in person on 31.3.2016 and the orders of assessment dated 29.4.2016 were served on 9.5.2016 to one Thiru.Kumar, who is the Accountant of the petitioner.

6. Now, the petitioner comes forward with a case that she has not received the pre-assessment notices and that the said Mr.Kumar is not their Accountant.

7. This being a disputed question of fact, the same cannot be adjudicated by this Court. Therefore, this Court will presume that the pre-assessment notices were duly served on the petitioner; so also the orders of assessment.

8. In this fact situation, the learned counsel for the petitioner pleads that one more opportunity may be granted to the petitioner to put forth their contentions before the first respondent and that the assessments may be directed to be redone.

9. Therefore, taking note of the fact that the assessment proceedings have been completed ex parte, this Court is inclined to grant an opportunity to the petitioner to file their objections, subject, however, to a condition.

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10. Accordingly, the writ petitions are disposed of with a direction to the petitioner pay 15% of the disputed tax for each of the assessment years within six weeks from the date of receipt of a copy of this order. After such payment is made, the petitioner is entitled to treat the impugned assessment orders as show cause notices. Thereafter, the petitioner is entitled to submit their objections within a period of two weeks therefrom. On receipt of the objections, the first respondent shall consider the same and after affording an opportunity of personal hearing to the petitioner, the first respondent shall redo the assessment. Further, on compliance of the condition imposed by this Court as indicated above, the attachment of the petitioner's account shall stand lifted. However, if the petitioner fails to comply with the above condition, the benefit of this order will not enure to the petitioner and the writ petition will stand dismissed automatically without any further reference to this Court and the petitioner will be at liberty to work out their remedies under the provisions of the Tamil Nadu Value Added Tax Act, 2006. No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer, Tondiarpet Assessment Circle, Chennai-81.

2.The Branch Manager, Allahabad Bank, Chennai-81.

+1 cc to Mr.R.Senniappan, Advocate,sr.45793

+1 cc to Govt.Pleader,sr.45791.

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