IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30415 of 2016 &
W.M.P.Nos.26367 & 26368 of 2016

M/s.Sri Vinayaga Stee,
Represented by its Proprietor,
No.61/29, North Fort Street,
Virudhachalam. .. Petitioner

Versus

1.The Deputy Commercial Tax Officer (Main),
Virudhachalam Assessment Circle,
Virudhachalam.

2.The Appellate Deputy Commissioner (CT),
Cuddallore.

3.The Branch Manager,
Indian Overseas Bank,
Virudhachalam. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN:33884423729/2014-15, dated 27.01.2016 and quash the same.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mrs.Vasudha Thiagarajan
Additional Government Pleader

O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mrs.Vasudha Thiagarajan, learned Additional Government Pleader, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred as "TNVAT Act"), has filed this Writ Petition, challenging the order of Assessment dated 27.01.2016 for the year 2014-15.

3. The petitioner would candidly admit that he failed to submit the objections to the pre-revision notice, dated 17.12.2015. The petitioner pleads that because of sickness, he could not file the objections. Therefore, the Assessing Officer was fully justified in completing the Assessment, since the petitioner did not avail the opportunity given to him. The impugned assessment order is said to have been received by the petitioner on 07.03.2016. Therefore, the petitioner could have preferred an Appeal as against the order, within 30 days from the said date and the petitioner had another 30 days, which delay could have been condoned by the Appellate Authority, if the petitioner had shown sufficient cause. The petitioner paid the 25% of the disputed tax before the Assessing Officer on 29.04.2016 as well as the Appeal Institution fee on the very same date before the Assessing Officer. However, the petitioner presented the Appeal only on 23.05.2016, which was beyond the time and therefore, the Appeal Memorandum has been returned.

4. The learned counsel for the petitioner submitted that the petitioner has realized his mistake and he pleads one more opportunity may be granted to him, as he has already remitted 25% of the disputed tax.

5. I heard the learned Additional Government Pleader on the above submissions.

6. Considering the peculiar facts and circumstances of this case, this Court is of the view that one more opportunity may be granted to the petitioner, subject to certain conditions.

7. Accordingly, the petitioner is directed to pay in addition to the payment of 25% of the disputed tax, 5% more of the disputed tax shall be paid, within two weeks from the date of receipt of a copy of this order. If the petitioner remits the said amount, then the impugned Assessment Order shall be treated as a show-cause notice and the first respondent shall afford opportunity to the petitioner to submit objections within 15 days there from and after hearing the petitioner in person, the Assessment shall be re-done in accordance with law. If the petitioner complies with the above direction, the benefit of this order will enure to the petitioner, failing which, the Writ Petition stands automatically dismissed without any reference to this Court. In the event, the petitioner complies with the order, the attachment of the petitioner's bank account shall be

lifted and it shall abide by the fresh orders of Assessment to be passed by the first respondent. No costs. Consequently, connected miscellaneous petitions are closed.

r n s

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To
1.The Deputy Commercial Tax Officer (Main),
Virudhachalam Assessment Circle,
Virudhachalam.

2.The Appellate Deputy Commissioner (CT),
Cuddallore.

3.The Branch Manager,
Indian Overseas Bank,
Virudhachalam.

+ 1 cc to Mr.P.Rajkumar, Advocate SR 49523

+ 1 cc to Spl. Govt.Pleader SR 49627

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