IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.38269 and 38270 of 2016
and
W.M.P.Nos.32814 and 32815 of 2016

M/s.G.K. Foundation,
Rep. by its Partner. ...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (CT)
Sembium Assessment Circle,
No.15 and 16, Malligai Avenue,
100 Feet Road, Kolathur,
Chennai - 600 099.

2. The Commercial Tax Officer,
Group - I,
Central Enforcement,
Greams Road, Chennai - 600 006. ...Respondents

Prayer in both W.Ps. Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the case relating to the impugned orders of assessment in TIN Years / 33191044871/2012-13 and 2013-14 respectively, dated 26.08.2016, passed by the first respondent and to quash the same.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.K.Venkatesh
Government Advocate

COMMON O R D E R

Heard Mr.T.Ramesh, the learned counsel appearing on behalf of the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondents. With the consent on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner is a registered dealer on the file of the first respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVATAct'). In these Writ Petitions, the petitioner has challenged the orders of assessment passed by the first respondent under the provisions of the TNVAT Act for the years 2012-13 and 2013-14.

3. On a perusal of the impugned orders, it is seen that the petitioner have failed to respond to the Pre Revision Notices issued to them, and did not submit any objections. Consequently, the Assessing Officer passed the impugned orders, confirming the proposals made in the Pre Revision Notices. The Assessing Officer cannot be faulted for the procedure adopted by her, in completing the assessment ex parte, as the petitioner did not avail the opportunity afforded to them. Therefore, the petitioner cannot complain that there has been violation of principles of natural justice.

4. The learned counsel appearing for the petitioner would submit that tax has been fully paid and there are certain calculation errors, and the Authority has not given any findings to confirm the proposals made in the Pre Revision Notices so far as tax is concerned. The learned counsel would further submit that the penalty should not have been levied, because, already, the offence was compounded before the Enforcement Officer, which has been recorded in the statement, on 28.03.2016.

5. With regard to both the contentions raised by the petitioner, if according to the petitioner, there are error apparent on the face of record in the impugned orders passed by the first respondent, then, the remedy available to the petitioner, is to approach the Assessing Officer by way of filing a Petition under Section 84 of the TNVAT Act, seeking rectification of errors, and that cannot be a ground to set aside the impugned orders of assessment, at this stage, that too, in a Writ Petition.

6. In the light of the above, this Court, while declining to quash the impugned orders on the grounds raised by the petitioner, is simultaneously, granting liberty to the petitioner to file a rectification Petition under Section 84 of the TNVAT Act, before the first respondent within a period of two weeks from the date of receipt of a copy of this order, and if such Petition is being filed by the petitioner, the first respondent shall consider the same on merits and in accordance with law, and after affording an opportunity of personal hearing to the petitioner, shall pass a speaking orders within a period of three weeks from the date of which, personal hearing is concluded. Till such time, no coercive action shall be

initiated against the petitioner for recovery of the penalty, which has been quantified in the impugned orders.

7. In the result, the Writ Petitions are disposed of with the above directions. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
Sembium Assessment Circle,
No.15 and 16, Malligai Avenue,
100 Feet Road, Kolathur,
Chennai - 600 099.

2. The Commercial Tax Officer,
Group - I,
Central Enforcement,
Greams Road, Chennai - 600 006.

+1cc to Mr.T.Ramesh, Advocate Sr.62325

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ca[co]
srg 02/12/2016