IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.36114 of 2003 &
WPMP No.43836 of 2003

M/s Goodwill Enterprises [PETITIONER]

Vs

1.The State of Tamil nadu, rep.
By the Secretary to Government
Department of Commercial Taxes &
Religious Endowments
Fot St.Geore, Chennai 600 009.

2.The Deputy Commercial Tax Officer
Karur (East), Karur. [RESPONDENTS]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records of the first respondent herein in Letter No.30633/D2/2002-1 on its files, quash the proceedings dated 06.02.2003 made therein and further direct the first respondent to grant waiver of penalty and penal interest in the light of G.O.Ms.No.973 dated 27.05.1967 and also as held by this Court in the order dated 20.08.2001 made in Writ Petition No.7751 of 1999.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is before this Court for the second time for almost the similar relief. In the earlier round of litigation, the petitioner approached this Court by filing W.P.No.4182 of 2000, challenging the levy of interest under section 24(3) of the TNGST Act on the turnover relating to REP licence for the assessment year prior to 1992-93. The said Writ Petition was disposed of by the Hon'ble Division Bench of this Court by an order dated 22.08.2002 and the operative portion of the order reads as follows:

> "3.The proper course for the petitioner, in our opinion, it to approach the Government for waiving that interest. Learned counsel for the petitioner says that his client will make an application. Counsel for the Government assures the Court that the Government will consider the representation fairly and dispose of the same within a period of three months from the date of the making of such representation. The representation shall be made within a period of fifteen days from today."

3.In terms of the above direction, the Government has to consider the petitioner's representation fairly and dispose of the same within a time frame. Fairness in approach would mean that the party should be afforded a proper and reasonable opportunity, before taking a decision in the matter. In the instant case, the petitioner placed reliance on the decision of this Court in the case of P.S.APPARELS v. DEPUTY COMMERCIAL TAX OFFICER, T.NAGAR EAST ASSESSMENT CIRCLE, MADRAS [94 STC 139]. The impugned order has been passed without affording an opportunity to the petitioner to place necessary records as well as the decisions and therefore, the impugned order calls for interference and the matter requires to be reconsidered.

4.In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the petitioner is directed to submit a fresh representation along with the copy of this order to the first respondent immediately, which shall be considered by the first respondent after affording an opportunity of personal hearing to the petitioner, within a period of three months from the date on which the representation is submitted by the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Rpa

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
State of Tamil nadu,
Department of Commercial Taxes &
Religious Endowments
Fot St.Geore, Chennai 600 009.

2.The Deputy Commercial Tax Officer
Karur (East), Karur.

1 cc to Special Government Pleader(Taxes), sr.33336
1 cc to Mr.Chandran Karuppiah Ramani, Advocate, sr.32934

W.P.No. 36114 of 2003

nrjk co
kra 28.06.2016