BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)Nos.1357 and 1358 of 2016
and
C.M.P(MD)Nos.9894 and 9895 of 2016

Neethi Match Factory,
Represented by its Prop.Mr.Martin Charles,
No.4/92, Koolaiyathevanpatti,
Sankaran Kovil Taluk 628 552.
Tirunelveli District. ... Appellant/Petitioner in both Appeals

Vs.

1. The State of Tamil Nadu,
Represented by it's Secretary to Government,
Department of Commercial Taxes & Registration
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer (Main),
Kovilpatti II,
Tuticorin District. ... Respondents/Respondents in both Appeals

PRAYER: The Writ Appeals are filed under Clause 15 of the Letters Patent against the common order dated 15.07.2016 made in W.P.(MD) Nos.12414 and 12415 of 2016 .

Prayer in WP(MD). 12414/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the 3rd respondent in his proceedings in TIN 33765942039/2014-15 dt. 30.03.2016 (received by the Petitioner on 06.05.2016) quash the same and to direct the 3rd respondent to accept the tax amount of Rs. 93,245/- for assessment year 2014-2015 under the TNVAT Act and thus render justice.

Prayer in WP(MD). 12415/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the 3rd Respondent in his proceedings in TIN 33765942039/2015-16 dt.30.03.2016 (received by the Petitioner on 06.05.2016) and quash the same and to direct the 3rd respondent to accept the tax amount of Rs.6,697/- for the assessment year 2015-2016 under the TN VAT ACT.

For Appellant : Mr.M.MD Ibrahim Ali
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

COMMON JUEGMENT
(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, both Writ Appeals are taken up for final disposal. The writ petitioner is the appellant in both appeals. The petitioner is proprietorship concern. It is also registered under the Tamilnadu VAT Act 2006 and Central Sales TAX Act, 1956(TNVAT and CST). The petitioner claims that it is a manufacturer and dealer in Venneers and the TIN number is 336765942039. It was obtained by his father in his name and his father was running the business and some time thereafter, he left separtely. The petitioner has also been furnished new Tin No.33446340691 on 09.10.2015 and as on today carrying on the business. The petitioner would state that though new Tin number was obtained in his name, the business was carried on by his father. Therefore, he was not aware of the affairs relating to the business and subsequently, his father became alcoholic and left the family and only on receipt of notice issued by the third respondent on 22.01.2016, informing that the Tin number of his father has been cancelled, tax collected has also been not paid to the Department, approached the respondent for an amicable settlement. However, the third respondent has passed orders of assessment dated 30.03.2016, which were received by the petitioner on 06.05.2016. The petitioner had approached his father to settle the arrears. But, he has refused to do so and therefore, challenging the legality of the assemeent orders dated 30.03.2016 the writ petitions in W.P.(MD) Nos.12414 and 12415 of 2016 were filed.

2. Mr.R.Karthikeyan, learned Additional Government Pleader accepts notice and brought to the knowledge of the court that though an opportunity was given in the form of pre-assessment notice, father of the petitioner did not pay tax and therefore, assessment orders came to be passed. The writ petitioner is having alternative remedy in filing an appeal to the appellate authority. The learned single Judge, taking note of the availability of the alternative remedy, has rightly dismissed the writ petitions by a common order dated 15.07.2016 and granted liberty to the petitioner to avail the said relief.

3. Mr.M.MD.Ibrahim Ali, learned counsel for the appellant would submit that the appellant without prejudice to his rights and contentions is willing to pay the tax as per the impugned assessment orders and however, may be granted liberty to challenge the levy of penalty as according to him non-remittance of tax is neither willful nor wanton and prays for appropriate orders.

4. Per contra, Mr.R.Karthikeyan, learned Additional Government Pleader, who accepts notice, would contend that it is also open to the petitioner to avail alternative remedy to put forth his contentions and as such, the writ petitioners have not availed alternative remedy and the learned Judge has also rightly held so and therefore, prays for dismissal of the Writ Appeals.

5. This Court has considered the rival submissions and perused the materials placed on record.

6. If the petitioner prefers appeal, he has to redeposit of 25% of tax. It is an admitted tax. In the case on hand, the appellant, without prejudice to rights and contentions, is willing to pay the entire tax as assessed in the impugned assessment orders and he only want to challenge the levy of penalty on the ground that non-payment of tax is neither wilful nor wanton and if at all so, only his father has committed mistake and he could not be held responsible.

7. In the result, the appellant, in terms of the assessment orders, shall remit the tax to the third respondent within a period of two weeks from the date of receipt of copy of this judgment and in so far as levy of penalty is concerned, the third respondent is directed to give fair opportunity to the petitioner to put forth his submission and upon receipt of the same, consider the objections in accordance with law and pass orders within further period of four weeks thereafter. Communicate the decision to the appellant. The Writ Appeals are disposed of accordingly. No costs. Consequently, connected C.M.P(MD)Nos.9894 and 9895 of 2016 are closed.

Sd/-
Assistant Registrar (Crl.side))

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Department of Commercial Taxes & Registration
   Fort St. George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Ezhilagam, Chepauk,
   Chennai - 600 005.

3. The Commercial Tax Officer (Main),
   Kovilpatti II, Tuticorin District.

+ 2 CC TO Mr.MOHAMED IBRAHIM ALI, ADVOCATE IN SR No. 62364
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62503

CM
TE/KM : 09/11/2016 : 4P/7C

W.P(MD)Nos.1357 and 1358 of 2016
and
C.M.P(MD)Nos.9894 and 9895 of 2016
20.10.2016