BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.07.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).Nos.12414 & 12415 of 2016
and
WMP(MD)Nos.9427 and 9428 of 2016

Neethi Match Factory,
Represented by its Prop. Mr.Martin Charles
...Petitioner in both W.Ps

Vs.

1.The State of Tamil Nadu,
Represented by its 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 in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certioraried Mandamus to call for the records relating to the order of the third respondent in his proceedings in TIN 33765942039/2014-15, and TIN 33765942039/2015-16 dated 30.03.2016(received by the petitioner on 06.05.2016), quash the same and to direct the third respondent to accept the tax amount of Rs.93,245/- for the assessment year 2014-2015 and Rs.6,697/- for the assessment year 2015-2016 under the TN VAT Act.

(In Both W.Ps)

For petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

COMMON ORDER

M/s.Neethi Match Factory represented by its Proprietor Mr.Martin Charles has suffered the impugned proceedings passed by the Commercial Tax Officer(main), Kovilpatti in TIN.No.33675942525/2014-2015 and 2015-2016, DATED 30.03.2016 in and by which, the tax due proposed was confirmed along with penalty on the ground that when the pre-assessment notice, dated 22.01.2016, was sent to the petitioner stating that after making sales of Match Raw materials, the petitioner has collected VAT Tax illegally against the provisions under Section 40(2)(ii) of the TNVAT Act, but he has not filed any reply or objection. Challenging the same the petitioner has come to this Court on the ground that when the petitioner is a manufacturer and dealer in veneers and obtained TIN No.336765942039 in his name and his father was running the business, subsequently, New TIN No.33446340691 was obtained by him on 09.10.2015 and since then he has been running the business. While so, since his father had closed the business in the year 2010 without informing anything to him, after some time, he came to know from the notice issued by the third respondent, dated 22.01.2016 that the previous TIN number has been cancelled and the tax collected was not paid to the Department. Subsequently, through mediators the petitioner requested his father to settle the tax dues by handing over the notice to him. But he failed to do so. Therefore, as a law abiding citizen, the petitioner to have peace and to continue the business with cordial relationship with the Department, has come forward to pay the tax amount collected by his father. Therefore, a lenient view may be taken and a direction may be given to the third respondent to accept the tax amount without penalty, it is pleaded

2. Mr.R.Karthikeyan, learned Additional Government Pleader after taking notice on behalf of the respondents would submit that the impugned orders cannot be challenged before this Court under Article 226 of the Constitution of India, as the petitioner has got a right to file an appeal. He would further submit that time to file appeal is also gone by.

3. Heard the submissions made on both sides and perused the materials available on record.

4. I find some merits in the submission made by the learned Additional Government Pleader. When it is not in dispute that the petitioner's business is being run by his father on the ground that his father has not paid the tax, the petitioner cannot have any complaint against the impugned order since the impugned order clearly shows that when the pre-assessment notice was issued calling upon him to submit his explanation, as to why tax proposed should not be determined, along with penalty, he has not come forward with a reply. Therefore, he has to make out his case by approaching the appellate authority.

5. In view of the above, this Court does not find any merits in these Writ Petitions. Hence, this Writ Petitions are dismissed. However, it is open to the petitioner to approach the appellate authority within a period of two weeks from the date of receipt of a copy of this order. In the event of filing such appeal, the appellate authority shall consider the same and pass appropriate

orders, on merits and in accordance with law. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes & Registration,
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2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam,
Chepauk, Chennai - 600 005.

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

+1cc to M/S Special Government Pleader, Sr No. 37170

+2 cc to Mr.M.Mohamed Ibrahim Ali,Advocate, Sr.No: 37176

JAM/DB/16.09.16/ 3p-7c

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