BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2016

CORAM

THE HONOURABLE **MR.JUSTICE T.RAJA**

W.P(MD).No.14212 of 2016
and
W.M.P.(MD).No.10545 of 2016

Tvl.Varthini Enterprises,
rep.by its Proprietrix,
J.G.Nivedhitha,
Tirunelveli Town-627 006 ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Cheapuk, Chennai-600 005.

2.The Deputy Commercial Tax Office,
Tirunelveli Bazaar Circle,
Commercial Tax Buildings,
Reserve Line Road,
Palayamkottai, Tirunelveli-627 002. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN/33205642132/14-15 dated 18.04.2016 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For petitioner : M/s.R.Veeramanikandan & R.Rooban

For respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner, seeks to quash the correctness of the impugned order, dated 18.04.2016 passed by the second respondent.

2. As against the petitioner / assessee, on an earlier occasion, the second respondent issued a provisional pre-assessment notice, dated 16.12.2014, and passed the assessment order, dated 11.03.2015, under Section 22(2) of the Tamil Nadu Value Added Tax Act. The said order, on being challenged, this Court had issued a direction to the second respondent to re-do the assessment, after providing adequate opportunity to the petitioner. Subsequently, the second respondent has issued a pre-revision notice dated 26.02.2016, to which, the petitioner gave a reply on 19.04.2016, whereupon, the second respondent has passed the impugned order, dated 18.04.2016, by confirming the proposal made in notice and sent the same to the petitioner on 26.04.2016, without referring to the petitioner's reply dated 19.04.2016. Hence, the petitioner is before this Court.

3. Learned Counsel for the petitioner vehemently argued that, when the petitioner has sent the reply dated 19.04.2016, the respondents did not bother even to refer the same in the impugned order, dated 18.04.2016 and, served the same through post only on 25.04.2016. According to him, the respondents are not justified in passing the impugned order in a hurried manner. To sum up, the respondents have anti-dated the impugned order to substantiate their claim. Had the reply of the petitioner been considered, definitely, the respondents would not have passed the present impugned order, as the petitioner has refuted the allegations by producing all relevant documents.

4. Learned Additional Government Pleader would submit that, the petitioner cannot seek any indulgence from this Court as the claim is barred by limitation.

5. Considered the submissions made on either side and perused the materials available on record.

6. This is the second round of litigation launched by the petitioner. Earlier, this Court had considered the case of the petitioner in W.P.(MD).No.13148 of 2015 and remanded the matter back to the respondents, with a direction to afford an opportunity to the petitioner. Now, from a perusal of the impugned order, it is seen that the petitioner failed to avail the opportunities provided to him. The impugned order would show that for the pre-revision notice dated 26.02.2016, the petitioner is expected to give reply within 15 days from 26.02.2016. However, he filed the reply only on 19.04.2016. Therefore, there is a delay on his part in giving the reply. When there is fault on the part of the petitioner, he cannot blame the respondents that the impugned order is an anti-dated one. In otherwords, the petitioner cannot drag on the matter in one way or the other and escape from the clutches of law. Further, disputed facts cannot be gone into by this Court exercising its jurisdiction under Article 226 of the Constitution of India and it is for the petitioner to file an

appeal and seek appropriate relief in the manner to law. That apart, as rightly pointed out by the learned Additional Government Pleader, as against the order dated 18.04.2016, the petitioner is supposed to have preferred an appeal by 18.05.2016, but, he has failed to do so. The order impugned in this Writ Petition does not call for any interference by this Court.

7. In that view of the matter, the Writ Petition stands dismissed *in limine*. It is open to the petitioner to file an Appeal before the authority concerned within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Cheapuk, Chennai-600 005.

2.The Deputy Commercial Tax Office,
Tirunelveli Bazaar Circle,
Commercial Tax Buildings,
Reserve Line Road,
Palayamkottai,
Tirunelveli-627 002.

Copy to
The Section Officer,
English Record Section,
Madurai Bench of Madras High Court, Madurai

+1 cc to MR.B.ROOBAN, Advocate Sr.No.42529

W.P(MD).No.14212 of 2016
and
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05.08.2016

SMA/GSV-PM/27/09/2016 :3P/5C