IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.5170 & 5171 of 2017
and
W.M.P.Nos.5454 & 5455 of 2017

M/s. Shiva Shree Builders,
Rep.by its Authorised Signatory,
Near Brindavan Nagar,
Civil Aerodrome Post,
Coimbatore - 641 014. ... Petitioner
(in WP.Nos.5170 & 5171 of 2017)

Vs.

The Commercial Tax Officer,
Peelamedu South Circle,
Coimbatore. ... Respondent
(in WP.Nos.5170 & 5171 of 2017)

Common Prayer:

Writ petition Nos.5170 & 5171 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the respondent in TIN Nos.33072103575/2012-13 & 33072103575/2013-14 dated 23.01.2017 and to quash the order passed therein and to direct the respondent to pass fresh orders under Section 6 of TNVAT, respectively.

For Petitioner: Mr.C.Baktha Siromoni
(in WP.Nos.5170 & 5171 of 2017)

For Respondent : Mr.K.Venkatesh
Government Advocate
(in WP.Nos.5170 & 5171 of 2017)

C O M M O N O R D E R

The petitioner is aggrieved by the orders of assessment dated 23.01.2017, passed in respect of the assessment years 2012-2013 and 2013-2014.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Heard Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

3. The Assessing Officer before passing the impugned orders of assessment issued a notice of proposal dated 14.08.2015, separately for each assessment years indicating the defects viz., that the petitioner did not file optional letter for the year 2013-2014 under section 6 of the Tamil Nadu Value Added Tax Act and that they have not filed their monthly return electronically.

4. The learned counsel for the petitioner submitted that both the reasons are not correct, since the petitioner has filed the optional letter in time and they have got proof of filing the same. Insofar as the second reason is concerned, it is the contention of the learned counsel for the petitioner, that in view of the circular issued by the Commissioner of Commercial Taxes, filing of monthly return electronically would arise only from October 2014. Therefore, it is his contention that when the present dispute is with regard to the assessment years 2012-2013 and 2013-2014, the question of filing the monthly return electronically does not arise.

5. The respondent filed a counter affidavit, wherein, he specifically denied the filing of optional letter, specifically by stating that the optional letters said to have been filed on 20.04.2012 for the year 2012-2013 and on 22.04.2013 for the year 2013-2014 were fabricated records and not a genuine one. It is also the specific case of the respondent that the petitioner did not indicate the official designation who received the optional letter with official seal. Insofar as the other reason viz., filing of monthly return electronically is concerned, it is the contention of the respondent that the petitioner has filed the returns after three years in the year 2015 and therefore they cannot rely upon the circular issued by the Commissioner.

6. Considering the above stated facts and circumstances and the respective contentions of the parties, it is evident that insofar as the filing of the option letter is concerned, such filing is disputed by the other side specifically by contending that some records are fabricated by the petitioner. Therefore, in view of the above said disputed question of fact, this Court is not inclined to interfere, as it is open to the petitioner to raise the contention before the Appellate Authority, who is also the fact finding authority. Insofar as the next contention viz., filing of the monthly return electronically is concerned, again this Court is not inclined to interfere, since it is an admitted fact that the petitioner has chosen to file the returns after a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

period of three years i.e., in the year 2015. Therefore, I am not inclined to exercise the discretion of this Court, as it is open to the petitioner to raise all the points before the Appellate Authority. Accordingly, without expressing any view on the merits of the contentions raised by the respective parties, these writ petitions are disposed of, with liberty to the petitioner to agitate the matter before the Appellate Authority by way of filing an appeal, within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed, the Appellate Authority shall consider the same on its own merits and in accordance with law, without reference to the period of limitation. The registry is directed to return the original impugned orders forthwith. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk/ms

To

The Commercial Tax Officer,
Peelamedu South Circle,
Coimbatore.

+1cc to Mr.C.Bakthasiraonmani, Advocate, S.R.No.43025
+1cc to the Government Pleader, S.R.No.43067

W.P.Nos.5170 & 5171 of 2017

SVI(CO)
RS(28/06/2017)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/