In the High Court of Judicature at Madras

Dated: 11.01.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.920 of 2017
& WMP No.905 of 2017

M/s.Deepika Traders,
rep. by its Proprietor
No.91/1, Ramamoorthy Nagar,
Karungalpalayam, Erode - 638 003.

.... Petitioner

Vs.

Commercial Tax Officer,
Park Road Circle,
Erode.

.... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandmus to call for the records of the respondent in his proceedings in CST No.1117291/2014-15 dated 15.09.2016 and quash the above order and bank attachment notices issued therein and to direct the respondent to pass revised orders under CST Act for the year 2014-15 as per law after receiving the 'C' Forms now available with the petitioner and to consider the rectification application dated 13.10.2015 filed under Section 84 of the TNVAT Act read with Section 9(2) of CST Act.

For Petitioner : Mr.C.Bakthasiromoni
For Respondents : Mr.K.Venkatesh

O R D E R

1. Issue notice. Mr.Venkatesh, accepts notice on behalf of the respondent.

1.1. With the consent of the counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. The Writ Petition is directed against the order dated 15.09.2016. Via this order, the respondent has imposed tax, in

the sum of Rs.1,47,437/-, after making requisite adjustments for tax paid and penalty, in the sum of Rs.2,12,115/-. The impugned order pertains to the Assessment Year (A.Y) 2014-2015.

3. The record shows that the respondent had issued a notice dated 01.09.2015, whereby, the petitioner was called upon to file declaration forms for availing concessional rate of tax. Via the said notice, the petitioner was informed that if, declaration forms were not filed, he will be assessed at a higher rate of tax.

3.1. Evidently, the petitioner had filed some declarations in Form-C, which the respondent took into account, while issuing notice dated 24.08.2016. The record also shows that the petitioner filed objections to the notice dated 24.08.2016 via the communication dated 08.09.2016.

3.2. It is the case of the petitioner that declaration in Form-C filed, are not taken into account, and that, the respondent proceeded to pass the impugned order dated 15.09.2016, without considering the additional C- Forms.

3.3. The petitioner further avers that a representation, in that behalf, was made to the respondent, on 05.12.2016.

4. Given this background, learned counsel for the petitioner says that, in terms of clarification issued by the Commissioner vide circular dated 28.02.2001, albeit, under the provisions of Tamil Nadu General Sales Tax Act, 1959, which continues to operate, by virtue of the saving provision contained in Section 88(3)(i) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act'), the respondent can accept declarations in Form C, for a period of five (5) years.

5. It is, therefore, the submission of the learned counsel for the petitioner, that the respondent can rectify the order, by exercising the powers under Section 84 of the 2006 Act, once, the declarations in Form - C are filed with him, albeit, in original.

6. Mr.Venkatesh, who appears for the respondent, says that an opportunity in that behalf can be granted to the petitioner, in view of the circular dated 28.02.2001.

7. Accordingly, the Writ Petition is disposed of with the direction to the respondent to accept the declarations in Form C, if, presented by the petitioner, in original. In case, the declarations are found to be in order, the respondent will pass a suitable orders rectifying the impugned order dated 15.09.2016.

7.1. For this purpose, the authorised representative of the petitioner will remain present before the respondent on 01.02.2017 at 11.00 a.m.

7.2. If, for any reason, the said date is not convenient to the respondent, he will fix another date, which would be proximate to the date indicated above.

7.3. The respondent will, thereafter, pass an order on the representation dated 05.12.2016, which would be treated as a rectification petition, filed under Section 84 of the 2006 Act.

7.4. The needful will be done with due expedition, though, not later than eight (8) weeks from the date of receipt of a copy of the order.

8. The Writ Petition is disposed of in the aforementioned terms.

9. Resultantly, the connected Miscellaneous Petition is closed. There will, however, be no order as to costs.

Index : Yes/No

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To
Commercial Tax Officer,
Park Road Circle,
Erode.
+1 CC to M/s. C. Bakthasiromoni, Advocate sr 2736
+1 CC to M/s. Spl. Govt. Pleader sr 3269

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