In the High Court of Judicature at Madras

Dated: 14.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.5561 of 2017

and

W.M.P.No.5914 of 2017

M/s.Sri Durga Plastics,
No.23, Takkudin Khan Bagadur Street,
Chennai 600 005. ... Petitioner

Vs.

The Commercial Tax Officer,
Office of the Assistant Commissioner (CT),
Chepauk Assessment Circle,
PAPJM Annex Building First Floor,
No.1, Greams Road, Chennai 600 006. ...Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the entire records in connection with the impugned orders dated 10.06.2016 in TIN 33690661446/2014-15/0 CST/698416/2010-11, dated 20.12.2016 TN 33690661446/2014-15/CST No. 698416/2014015 and dated 23.02.2017 TIN 33690661446/2014-15/0 CST/698416/2010-11 issued by the first respondent, quash the penalty of Rs.1,08,340/- levied on the petitioner firm illegally.

For Petitioner : Mr.K.V.Subramanian
Senior Counsel
for M/s.K.V.Subraminan Asso.

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

This writ petition is filed challenging the impugned proceedings dated 10.06.2016, 20.12.2016 and 23.02.2017 issued by the first respondent.

2.Under the proceedings dated 10.06.2016, the first respondent passed an order of reversing assessment, imposing tax and penalty on the petitioner in respect of Assessment Year 2010-2011. Under proceedings dated 20.12.2016, the petitioner was called upon to pay the arrears of tax and penalty in respect of Assessment Years 2010-2011 and 2014-2015. Under proceedings dated 23.02.2017, again the petitioner was called upon to pay the arrears of the tax and penalty in respect of Assessment Year 2010-2011.

3.The reversal of assessment order in respect of Assessment Year 2010-2011 is challenged mainly on the ground that the petitioner was not given due opportunity to file their objections to the notice issued on 05.05.2016. According to the petitioner, the Consultant, who had dealt with the matter had expired and therefore, the notice served on such consultant was not brought to the knowledge of the petitioner and hence they were not in a position to file their objection.

4.Learned Government Advocate appearing for the respondent produced the file before this court to contend that the notice was served on the petitioner on 10.05.2016. But the learned senior counsel appearing for the petitioner submitted that the person, who received such notice on 10.05.2016, is the Consultant, who had expired later and therefore, in effect, the petitioner was not in a position to file their objection, as the service of such notice was not brought to their knowledge. Apart from saying so, the learned Senior counsel also submitted that raising the similar objection, the petitioner has approached this court and filed a writ petition in W.P.No.44112 of 2016, challenging the assessment order passed in respect of the Assessment Year 2014-2015 and that this Court has set aside the said order of assessment and remitted the matter back for considering afresh by way of giving one more opportunity to the petitioner. Therefore, he submitted that similar relief in respect of the Assessment Year 2010-2011 also, can be given so that the petitioner will get one more opportunity to put forth their case.

5.Heard the learned Senior counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.



6.There is no dispute to the fact that in respect of the Assessment Year 2014-2015, an order of assessment was passed on 24.10.2016 and the same was put to challenge before this court in W.P.No.44112 of 2016. It is seen that the petitioner herein as the petitioner therein raised the very same ground viz., want of sufficient opportunity to file their objections, as the

Consultant had expired and the fact that the objections had not been filed, was not known to the petitioner.

7.Perusal of the order passed in the above writ petition would show that this court, in order to give one more opportunity to the petitioner, has set aside the order of assessment impugned therein and remitted the matter back for fresh consideration, specifically by directing the petitioner to appear before the first respondent on a particular date. When the very same objection was considered and an opportunity was given by this court in respect of Assessment Year 2014-2015, I am of the view that similar relief should be given to the petitioner in respect of Assessment Year 2010-2011 as well, since the objection raised in respect of both Assessment Years is one and the same.

8.Accordingly, the impugned order dated 10.06.2016 is set aside and the matter is remitted back to the first respondent for fresh consideration. The petitioner shall appear before the first respondent within a period of two weeks from the date of receipt of a copy of this order and make their objections in writing either in person or through their authorised representative. On receipt of such objection and after giving an opportunity of personal hearing to the petitioner, the first respondent shall pass fresh order on merits and in accordance with law within a period of two weeks thereafter. Since this Court has set aside the order of assessment dated 10.06.2016 and remitted the matter back to the authorities, the consequential order challenged in this writ petition dated 20.12.2016 and 23.12.2017 are also set aside. Needless to say that after passing the order afresh as stated supra, it is open to the respondent to proceed further and issue fresh notices in accordance with law.

The writ petition is allowed as indicated above. No costs. The connected miscellaneous petition is closed.



Sd/-
Asst.Registrar



/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Office of the Assistant Commissioner (CT),
Chepauk Assessment Circle,
PAPJM Annex Building First Floor,
No.1, Greams Road, Chennai 600 006.

+1cc to Mr.K.V. Subramanian, Associates Sr. 16213
+1cc to Special Government Pleader Sr. 16015

W.P.No.5561 of 2017

NM(CO)
VR(16/03/2017)