IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P Nos.30919 to 30925 of 2017
&
W.M.P.Nos.38282 and 38283 of 2017

W.P Nos.30919 of 2017

Tvl.Fineware Leathers Pvt. Ltd.,
Rep. by its Managing Director
A.Kabilan
No.8, Vadivel Street
West Tambaram
Chennai – 600 045 ... Petitioner

vs

The Assistant Commissioner (CT)
Tambaram Assessment Circle
Chennai – 45 ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the proceedings dated 22.05.2017 in TIN 33260884928/2007-08 on the file of the respondent and quash the same.

For Petitioner : Mr.R.Saravanakumar

For Respondent : Mr.K.Venkatesh
Government Advocate (Tax)

COMMON ORDER

Heard Mr.Senniappan, learned counsel for Mr.Saravana Kumar, learned counsel on record for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. This is the second time the petitioner is before this Court challenging the Assessment Orders, which were passed for the Assessment years 2007-08 to 2013-14. Earlier the petitioner has come before this Court stating that they did not have adequate opportunity to file their objections. This plea was rejected on the ground that the petitioner ignored the revisional notices and did not file objections within the time and therefore, the Assessing Officer cannot be blamed for the same. However, considering the fact that the matter was pending without the respondent being able to recover the tax and penalty as quantified, this Court thought it fit to give one more opportunity to the petitioner and disposed of the writ petitions by order dated 19.08.2016 by directing the writ petitioner to pay 15% of the disputed tax for each of the assessment years and if the same is remitted, the petitioner was permitted to treat the assessment orders as show-cause notices and submit objections in terms of the order passed by this Court. The petitioner has paid 15% of the disputed tax for each assessment years

and filed their objections. The respondent has considered the objections and passed impugned assessment orders. On a perusal of the Assessment Orders it is clear that the respondent has analysed the facts and given certain reasons as to why he is not inclined to accept the stand taken by the petitioner. To examine the correctness of the reasons assigned by the respondent in the impugned Assessment orders, it is necessary that the facts of the case have to be adjudicated, much of which has been disputed by the petitioner. This adjudication cannot be done in a writ petition. The petitioner has to necessarily avail the appellate remedy.

3. So far as the Central Sales Tax is concerned, the petitioner has filed an appeal which is pending before the Appellate Deputy Commissioner, and the same has been noted by the respondent in the impugned Assessment order. Therefore, this Court is of the considered view that as against the impugned Assessment Orders, the petitioner can be granted liberty to file an appeal as disputed question of facts are required to be adjudicated.

4. Accordingly, the writ petitions are held to be not maintainable. However, liberty is given to the petitioner to file an appeal before the Appellate Deputy Commissioner(CT), Chennai East within 15 days from

the date of receipt of a copy of this order and if the appeal is filed within 15 days, the Appellate Deputy Commissioner shall not reject the appeal on the ground of limitation. So far as the pre-deposit of 25% of the disputed tax is concerned, the appellate authority is directed to give credit to 15% of the tax already deposited pursuant to the directions issued by this Court in the earlier order of this court dated 19.08.2016 and demand the remaining amount. In case the petitioner seeks for stay of further collection of tax, the stay petition shall be dealt with by the appellate authority on merits and in accordance with law.

In the result, the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

06.12.2017

Speaking/Non-speaking order
Index: yes/no
gpa

Note: Registry is directed to return the original impugned order.

To

The Assistant Commissioner (CT)
Tambaram Assessment Circle
Chennai – 45

T.S.SIVAGNANAM.J.,

gpa

W.P Nos.30919 to 30925 of 2017 &
W.M.P.Nos.33831 to 33837 of 2017

06.12.2017