IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.9873 to 9876 of 2017
and connected miscellaneous petitions

M/s.Jyothi Structures Limited,
Rep.by its Authorized Signatory-
A.Siv Prakash,
Myvadi Village,
Madathukulam Taluk,
Udumalpet. ... Petitioner in all Wps

Vs.

The Assistant Commissioner (CT),
Udumalpet (North) Circle,
Udumalpet. ... Respondent in all Wps

Common Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN:33872482134/2010-11, TIN:33872482134/2011-12,TIN:33872482134/2012-13, TIN:33872482134/2013- dated 09.02.2017 and quash the same.

For Petitioner in all Wps : Mrs.R.Hemalatha

For Respondent in all Wps : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax

Act and the Central Sales Tax Act, has filed these writ petitions challenging the assessment orders under the TNVAT Act, for the assessment years 2010-11, 2011-12, 2012-13 and 2013-14.

3. Though the learned counsel for the petitioner advanced certain arguments on the merits of the assessment, the Court declined to go into the said aspect for the simple reason that the petitioner failed to avail the opportunities provided by the Assessing Officer to file their objections and to produce the documents.

4. The learned counsel for the petitioner would contend that the Managing Director of the Company was hospitalized between 01.08.2016 and 08.08.2016 at Nasik and therefore unable to contact his Officers to take appropriate action on the notice issued by the Assessing Officer. Considering the turn over of the petitioner and the nature of business activities done by them especially for the Electricity Board, the reason given by the petitioner referring to the ill-health of the Managing Director cannot be accepted and the same is rejected as an after-thought. However, learned counsel for the petitioner would plead that one more opportunity to be granted to the petitioner to produce the documents and the assessment may be set aside and the proceedings may be directed to be redone afresh. The prayer sought for by the petitioner cannot be granted, since the manner in which the assessment has been finalized cannot be faulted as the fault lying with the petitioner for not producing the documents.

5. However, this Court does not propose to foreclose the rights of the petitioner in producing the documents before the Assessing Officer, considering the fact that they have substantial turn over of each of the impugned assessment year. Therefore, this Court is inclined to put the petitioner on terms for being entitle to an opportunity.

6. Accordingly, these writ petitions are disposed of by directing the petitioner to pay 15% of the disputed tax for each of the assessment years within a period of four weeks from the date of receipt of a copy of this order. If the petitioner complies with the conditional order, then the petitioner is entitled to submit a petition under Section 84 of the TNVAT Act along with the supportive documents and such petition shall be considered by the respondent in accordance with law, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply with the conditional order within the time stipulated, the benefit of this order will not enure to the petitioner and the writ petition would be automatically dismissed without reference to this Court, leaving

it open to the petitioner to work out their remedies before the appropriate forum.

7. In the light of the above direction, no coercive action shall be initiated against the petitioner for recovery of the balance tax and penalty, if the petitioner complies with the condition. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsk/rkm

To

The Assistant Commissioner (CT),
Udumalpet (North) Circle,
Udumalpet.

+4cc to M/s.R.Hemalatha, Advocate, S.R.No.48501
+1cc to Special Government Pleader, S.R.No.48680

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NMI(CO)
CU(02/08/2017)