IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.8887 and 8888 OF 2017
AND
W.M.P Nos.9795 to 9798 OF 2017

V.Thirumoorthy [PETITIONER in both W.Ps]

Vs

The Commercial Tax Officer,
Sathyamangalam. [RESPONDENTS in both W.Ps.]

Common Prayer:-Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records of the respondent in TIN: 33142981455/2013-14 and TIN:33142981455/2014-2015 culminating in proceedings Ma. Ku. Va. En.33142981455/2013-14 and Ma. Ku. Va.En.33142981455/2014-15 respectively and quash the order dated 24.02.2017 and consequential proceedings dated 31.03.2017 passed therein and further direct the respondent to give credit for the Tax Deducted at source by the petitioner's customers (who are Government Departments/Government Organizations) and also cross examination of the petitioner's sellers whose annexure II has been cross verified by the respondent as mentioned in the impugned order.

For Petitioner : Mr.B.Raveendran
in both W.Ps.

For Respondents: Mr.S.Kanmani Annamalai
in both W.Ps. Additional Government Pleader (T)

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondents. By consent of both parties, the main writ petitions are taken up for final disposal at the admission stage itself.

2.The petitioner is aggrieved against the orders of assessment and further orders made under Section 84 of the Tamilnadu VAT Act, rejecting the petitioner's applications for rectification in respect of the Assessment Years 2013-2014 and 2014-2015.

3.Though these writ petitions are filed challenging the orders of assessment as well, the learned counsel for the petitioner submitted that he may be permitted to challenge the same before the Appellate Authority and however, before making such appeal, the grievance of the petitioner in not giving credit to the TDS, as requested by him in the applications filed under Section 84 of the said Act, has to be considered, since orders passed in such applications would have a barring on the appeal to be filed against the orders of assessment. In other words, it is the contention of the petitioner that if the Assessing Authority gives credit to the TDS, as sought for in Section 84 application, the tax liability would automatically come down, which the petitioner can agitate before the Appellate Authority in accordance with law. According to the petitioner, the order passed by the Assessing Authority under section 84 of the Act dated 31.03.2017 against the petitioner is because of the reason that the petitioner did not file Form-T in support of his claim for giving credit to TDS. It is therefore contended that the petitioner, who is in possession of the same, if given an opportunity, would submit those forms before the Assessing Authority, so as to enable him to pass a fresh order on the applications filed under Section 84.

4.Learned Additional Government Pleader appearing for the respondent submitted that if the petitioner seeks for credit to TDS, unless and until the relevant forms viz., Form-T are filed in original, the Authority cannot be found fault with in rejecting the request of the petitioner.

5.Heard both sides.

6.It is seen that as against the orders of assessment passed in respect of Assessment Years 2013-2014 and 2014-2015, the petitioner is now willing to go before the Appellate Authority and file the statutory appeal. Therefore, this Court, at this stage, is not expressing any view, on the merits of the assessment, as it is for the petitioner to canvass the correctness or otherwise of the same before the appellate authority. However, before filing such appeal, the petitioner wants his request for TDS credit, for which, the petitioner had already made applications under Section 84 of the Act, to be considered. The said applications were rejected by the Assessing Authority by stating that the relevant Forms-T were not furnished in original. Now it is stated before this court that the petitioner, if given a chance, would certainly file those forms so as to enable the Assessing Officer, to consider the request for the TDS credit.

7.Considering the above stated facts and circumstances and considering the very fact that the applications filed by the petitioner under Section 84 of the Act were rejected only on the reason that the petitioner has not filed the Form-T in original, in order to give one more opportunity to the petitioner, this court is of the view that the orders passed under Section 84 can be set aside and remit the matter back to the respondent for re-considering the said applications afresh. Accordingly, the writ petitions are partly allowed and the orders dated 31.03.2017, passed under Section 84 of the TN VAT Act, are set aside and the matter is remitted back to the respondent for considering the applications afresh, on merits and in accordance with law. The petitioner is given liberty to file the original Form-T within a period of two weeks from the date of receipt of a copy of this order. On receipt of such Forms T, the respondent shall pass an order on the applications under Section 84 of the Act, also after giving an opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of such forms. Since these writ petitions are allowed in part, setting aside the orders passed under Section 84 of the Act alone, it is open to the petitioner to file statutory appeals as against the orders of assessment in respect of the Assessment Years 2013-2014 and 2014-2015 before the Appellate Authority, after an order is passed by the respondent in Section 84 applications, as directed supra.

No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vri

To

The Commercial Tax Officer,

Sathyamangalam.

+1cc to Mr.B.Raveendran,Advocate sr.22294

+1cc to Special Government Pleader sr.22352

W.P.Nos.8887 and 8888 of 2017

sks(co)
ss(20/4/2017)