IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

The Hon'ble Mr. JUSTICE K. RAVICHANDRA BAABU

W.P.No.5976 of 2017
&
WMP.No.64030/2017

M/S. Sulochan Furniture,
Electronics Rep by its
Managing Partner
No.24 Venkatramanan Iyar Street,
Pollachi.. .. Petitioner

-vs-

Commercial Tax Officer,
Pollachi West Circle, Pollachi. .. Respondent

Petition filed under Article 226 of the Constitution of India, praying for Writ of Certiorari to call for the records of the respondent in TIN 33252241527/2014-2015 and quash the order dated 01.03.2016 passed therein.

For Petitioner : M/s.Hema Muralikrishnan
For Respondent : Mr.K.Venkatesh
Govt. Advocate

O R D E R

The Petitioner is a registered dealer on the file of the respondent under the Provisions of the Tamil Nadu Value Added Tax Act, 2006. They are aggrieved against the order of assessment dated 01.03.2016. The impugned assessment order came to be passed only on the reason that the Petitioner failed to file Audit Report in Form WW within the stipulated time.

2.According to the Petitioner, the audit report was made ready by the Auditor only on 31.12.2015 and therefore, it could not be filed on 31.12.2015 itself, being the last date as stipulated by the respondent-Department, since the computer server problem was there in uploading the said report. However, the petitioner has filed the Form WW Audit Report on 11.03.2016 along with penalty of Rs.10,000/- for belated filing of Form WW Audit Report. However, in the meantime, the impugned order of assessment came to be passed as stated supra.

3.The learned counsel appearing for the petitioner submitted that such belated filing of Form WW was not due to the fault of the petitioner on their own and on the other hand, the same was made ready, a little later and consequently, the petitioner filed the same belatedly along with penalty of Rs.10,000/- also. Therefore, she submitted that the respondent may be directed to consider the case of the petitioner based on the Form WW submitted on 11.03.2016 and pass fresh order of assessment, after giving due opportunity of hearing to the petitioner.

4.In support of the contention, the learned counsel relied on a Division Bench decision of this Court made in W.A.Nos.1148 and 1149 of 2015 (between Nithra Furniture P. Ltd. vs. The Asst. Commissioner (CT), Chennai), dated 11.08.2015, wherein, almost in identical circumstances, the Division Bench has set aside the assessment order and remitted the matter back to the Assessing Officer for taking on file the Form WW filed by the petitioner therein and pass fresh orders. Paragraphs 7 to 9 of the said order read as follows:

> ''7.If we have a look at the scheme of the Act, it will be clear that what the appellant is obliged to do under the Act, is to file monthly returns and not really the auditor's report. In any case, after the best of judgment assessment orders are passed, the appellant has filed Form WW. The correctness of the particulars reflected in Form WW are not in question. In such circumstances, the rejection of the request for passing revised assessment orders is not in accordance with law. This aspect has not been properly appreciated in the writ petitions.
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> 8.Once the original defect, if at all it was a defect, was cured by the assessee, by filing Form WW, the respondent cannot simply throw the form out on the ground that it was filed beyond the period of limitation. This is especially so when best of judgment assessment orders have been passed by him.
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> 9.In view of the above, the writ appeals are allowed and the common order of the learned Judge is set aside. The order dated 18.5.2015 passed by the respondent is set aside. The matter is remitted back to the respondent for taking on file Form WW filed by the appellant in respect of both the assessment years. The appellant has already paid the penalty. Therefore, the respondent shall accept Form WW and pass orders fresh. No costs. Consequently, the above Mps are closed.''

5.The learned counsel appearing for the respondent submitted that the facts and circumstances of the present case and the issue involved herein are undoubtedly covered by the decision of the Division Bench of this Court as cited supra.

6.Considering the above stated facts and circumstances and more particularly of the fact that the present issue involved is covered by the above decision of the Division Bench of this Court, I have no hesitation in setting aside the impugned order of assessment for remitting the same back to the Assessing Authority to pass fresh orders, after considering the Form WW submitted by the petitioner, though belatedly. In this case, admittedly, the petitioner has paid the penalty amount as well. Therefore, there cannot be any impediment for the respondent to re-consider the matter afresh.

7.Accordingly, the writ petition is allowed, the impugned order of assessment is set aside and the matter is remitted back to the Assessing Authority for considering the Form WW submitted by the petitioner and pass a fresh order of assessment, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Authority within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.6403 of 2017 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sra

To

The Commercial Tax Officer,
Pollachi West Circle, Pollachi.

+ 1 cc to M/s. B. Raveendran, Advocate Sr.16849
+ 1 cc to Special Government Pleader Sr.16630

W.P.No.5976 of 2017

RSK(CO)
EU 6.4.17