

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2017

Coram

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

Writ Petition No.32948 of 2017

and

W.M.P.No.36331 & 36332 of 2017

M/s. Sri Sharadha Timbers,
rep. by its Sole Proprietor.

...Petitioner

Vs.

The Additional Deputy Commercial
Tax Officer, IAC,
Room No.39, III Floor, Commercial Tax Complex,
Near Indira Gandhi Statue,
Puducherry - 605 005.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, pertaining to the impugned order, vide No.34920008493/74/2016-17, dated 22.10.2016, passed by the respondent and to quash the same as highly illegal and to direct the respondent to issue 'C' forms and 'F' form declaration by unlocking the on-line facility to the petitioner in TIN No.34920008493.

For Petitioner : Ms. L. Poompavai
For Respondent : Mr. J. Kumaran
Government Advocate

O R D E R

Heard Mrs. L. Poompavai, the learned counsel appearing for the petitioner and Mr. J. Kumaran, the learned Government Advocate accepting notice on behalf of the second respondent. With the consent on either side, the Writ Petition is taken up for disposal.

2. The petitioner has filed this Writ Petition, challenging the order, dated 22.10.2016, passed by the respondent, refusing to permit the petitioner to generate Form 'C' and 'F' declarations from the Department website. The reasons for rejection is that, the Department has filed an Appeal before the Puducherry Value Added Tax Appellate Tribunal/Principal District Judge, Puducherry, in T.A.No.9 of

2016, challenging the order passed by the Appellate Assistant Commissioner, dated 08.07.2015, and order of interim stay was granted by the Tribunal, in I.A.No.1050 of 2016, dated 28.04.2016, and therefore, the petitioner is a defaulter in payment of tax and cannot be permitted to generate Form 'C' and 'F' declarations via., on-line.

3. The basis, on which, the impugned order has been passed is completely flawed, for the reason that the Appellate Assistant Commissioner has allowed the Appeal and set aside the assessment order passed by the Assessing Officer, dated 08.12.2014. Consequently, the demand of tax, penalty stood set aside and the matter was remitted to the Assessing Officer to consider all the materials produced by the petitioner and pass a suitable revised orders on merits of the case, after hearing the petitioner properly. Therefore, by order of stay of the order of remand, the respondent cannot treat the petitioner to be assessee in default, and deny online generation of 'C' and 'F' form declarations. I am of the considered view, at best, the order of stay can have effect only on the Assessing Officer to proceed with the fresh proceedings based on the order of remand, and by obtaining the stay order, dated 08.12.2014, quantification of the tax and penalty cannot stand revived. If the interpretation given by the respondent is to be accepted, the respondent would be succeeding by obtaining stay of the order passed by the Appellate Authority and without obtaining any final order, seek to recover tax and penalty. Such interpretation cannot be given to the order of interim stay. Therefore, the impugned order has to be held to be not-sustainable in law.

4. In the result, the Writ Petition is allowed, the impugned order, dated 22.10.2016 is set aside. The petitioner should be permitted to generate on-line Form 'C' and 'F' declarations. The respondent is at liberty to proceed with the matter before the Puducherry Value Added Tax Appellate Tribunal/Principal District Judge, Puducherry, before whom, T.A.No.9 of 2016 is pending. The above direction, permitting the petitioner to generate on-line Form 'C' and 'F' declarations, shall be complied with by the respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AR-J)

//True Copy//

Sub Assistant Registrar

sd

To

The Additional Deputy Commercial
Tax Officer, IAC,
Room No.39, III Floor, Commercial Tax Complex,
Near Indira Gandhi Statue,
Puducherry - 605 005.

Copy to: The Puducherry Value Added Tax Appellate
Tribunal/Principal District Judge,

+ 1 cc to Ms. L. Poompavai, Advocate SR.90011
+ 1 cc to Mr. Special Government 90759
+ 1 cc to Government Pleader SR.90423

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AR-J
EU(09/01/2018)



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