IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.33641 and 33642 of 2017
and
W.M.P.Nos.37223 to 37225 of 2017

Tvl.Kumar Agencies,
Reptd.by its Proprietor
T.Ravikumar
S/o. S. Vincent Thangaraj,
No.22, Arunachalam Road
Saligramam
Chennai 600 093. .. Petitioner in both W.Ps.

..Vs..

The Commercial Tax Officer,
Saligramam Assessment Circle,
No.21, G.K.Industrial Estate,
Alappakkam, Porur,
Chennai 600 116. .. Respondent in both W.Ps.

Prayer in W.P.No.33641 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records comprised in the impugned orders passed by the respondent in TIN-33871386325/2011-12 dated 19.01.2015 and to quash the same as unconstitutional and violation of principles of natural justice.

Prayer in W.P.No.33642 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records comprised in the impugned order passed by the respondent in TIN:33871386325/2013-14 dated 06.06.2016 and quash the same as unconstitutional and violation of principles of natural justice.

For Petitioner in both W.Ps. : Mr.K.M.Malarmannan

For Respondent in both W.Ps. : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard Mr.K.M.Malar Mannan, the learned counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate accepting notice on behalf of the respondent. With the consent of parties, the main Writ Petitions are taken up for disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is aggrieved by assessment orders passed by the respondent, for the assessment years 2011-12 and 2013-14 under the TNVAT Act, dated 19.01.2015 and 06.06.2016 respectively.

3. It is seen that the assessment orders were passed on 19.01.2015 and 06.06.2016 respectively. Admittedly, the petitioner did not file any Appeal as against the impugned assessment orders. Therefore, the Court would have dismissed the Writ Petitions as not maintainable. However, considering the fact that the petitioner is a small time dealer, even though the respondent has passed orders in 2015 and 2016, they were unable to recover even a single paise towards the tax or penalty, as quantified in the impugned assessment orders and they have remained as papers orders with no resultant recovery. Therefore, this Court, with a view to strike a balance between the revenue and the petitioner, is inclined to issue appropriate direction, so that, the interest of the revenue would be safeguarded, at the same time, the petitioner is given more opportunity to go before the Assessing Officer to substantiate their case.

4. Accordingly, these Writ Petitions are disposed of, by directing the petitioner to pay 15% of the disputed tax for each of the assessment year, and such payment shall be effected within a period of fifteen days from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, they will be entitled to treat the impugned assessment orders as show cause notices, and submit their objections within 15 days thereafter, enclosing all relevant records to fortify their claim. After the objections/reply is received in full form, the respondent shall afford an opportunity of personal hearing to the petitioner, and redo the assessment in accordance with law. Till the above exercise is completed, no coercive action shall be initiated against the

petitioner for recovery of the balance tax and penalty, as quantified in the impugned assessment orders. It is made clear that, if the petitioner does not comply with the condition imposed by this Court, then, the respondent shall proceed further pursuant to the impugned assessment orders in accordance with law.

5. In the result, both the Writ Petitions are disposed of, as stated supra. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

dna/sd
To

The Commercial Tax Officer
Saligramam Assessment Circle
No.21, G.K.Industrial Estate
Alappakkam, Porur,
Chennai 600 116.

+2 Ccs to Mr.K.M. Malarmannan, Advocate sr 92096.
+1 CC to The Govt. Pleader sr 92421

W.P.Nos.33641 and 33642 of 2017

SP(10/01/2018)