IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.13771 to 13774 of 2017
and
WMP.Nos.14957 to 14960 of 2017

Copier Company
Represented by its proprietor,
Mujib Rahim,
No.3/972,M.S.M.Estate,
Mugalivakkam Main Road,
Madanandapuram, Porur,
Chennai - 600 116 ... Petitioner
(in WP Nos.13771 to 13774 of 2017)

Vs.

1. Appellate Deputy Commissioner (CT)
Chennai (South),
3rd Floor, PAP JM Building Annexe,
No.1 Greams Road,
Chennai - 600 006.

2. Commercial Tax Officer
Porur Assessment Circle,
Madhanandhapuram Village
Chennai-600 125. .. Respondents
(in WP Nos.13771 to 13774 of 2017)

Prayer:

Writ petition No.13771 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in A.P.No.75/2014/VAT 2009-10(in Old AP No.9/2012/VAT-VI) dated 20.10.2016 and quash the same and further direct the first respondent to re-hear the appeal on merits.

Writ petition No.13772 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in A.P.No.47/2014/CST 2009-10(in Old AP No.27/2012/CST-VI) dated 20.10.2016 and quash the same and further direct the first respondent to re-hear the appeal on merits.

Writ petition No.13773 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in A.P.No.41/2014/CST 2010-11(in Old AP No.1/2012/CST-VI) dated 20.10.2016 and quash the same and further direct the first respondent to re-hear the appeal on merits.

Writ petition No.13774 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in A.P.No.76/2014/VAT 2010-11(in Old AP No.10/2012/VAT-VI) dated 20.10.2016 and quash the same and further direct the first respondent to re-hear the appeal on merits.

For Petitioner (in all WPs) : Mr.N.Murali

For Respondents (in all WPs) : Mr.K.Venkatesh Government Advocate

C O M M O N O R D E R

All these writ petitions are filed challenging the orders passed by the Appellate Authority dismissing the appeals filed by the petitioner both under the Tamil Nadu Value Added Tax, Act and the Central Sales Tax, Act, challenging the orders of assessment passed in respect of assessment years 2009-2010 and 2010-2011.

2. Mr.K.Venkatesh, learned Government Pleader takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

3. The learned counsel for the petitioner submitted that the Appellate Authority has dismissed the appeals without hearing the petitioner and non-appearance of the petitioner before the Appellate Authority was neither willful nor wanton and only due to the bona fide reason of change of address, which unfortunately was not intimated to the Appellate Authority.

4. Per Contra, the learned Government Advocate appearing for the respondents submitted that after giving due notice of hearing on more than one occasion, the Appellate Authority has chosen to dispose of the appeals, after hearing the departmental representative, since the petitioner failed to appear on those occasions.

5. Heard both sides.

6. It is not in dispute that the Appellate Authority has chosen to dismiss the appeals, after hearing the departmental representative alone and that the petitioner was not at all represented before him.

7. It is seen from the order passed by the Appellate Authority that the petitioner has not chosen to appear even after issuing notice of hearing. A careful perusal of the order would indicate that the Appellate Authority has noted only the issuance of the notice and not given any specific finding as to whether such notice was served on the petitioner. In any event, as the petitioner contends that they have changed the address, which was not intimated to the Appellate Authority by over sight, I am of the view that the petitioner should be given one more opportunity to appear before the Appellate Authority and agitate the matter on merits. It is also stated that the petitioner has paid 25% of the tax liability at the time of filing the appeals. Therefore, no prejudice would be caused, if the appeals are heard once again by giving one more opportunity of hearing to the petitioner, so that the Appellate Authority shall consider and pass fresh orders on merits and in accordance with law.

8. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently the matter is remitted back to the first respondent / Appellate Authority for re-considering the appeals once again on merits and pass fresh orders, after hearing the petitioner. The Appellate Authority shall indicate the date of hearing of the appeals and issue the notice to the present address of the petitioner, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner shall appear before the Appellate Authority on the date so fixed without fail. It is made clear that the petitioner is not entitled to seek for further adjournment before the Appellate Authority. After hearing the petitioner, the appeals shall be disposed of by the Appellate Authority on their own merits and in accordance with law, within a period of four weeks from the date of hearing. It is made clear that this Court is not expressing any view on the merits of the matter as it is for the Appellate Authority to consider the same. No costs. Connected MPs are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. Appellate Deputy Commissioner (CT)
   Chennai (South),
   3rd Floor, PAP JM Building Annexe,
   No.1 Greams Road,
   Chennai - 600 006.

2. The Commercial Tax Officer
   Porur Assessment Circle,
   Madhanandhapuram Village
   Chennai-600 125.

+4ccs to Mr.N.Murali,Advocate sr.40275

+1cc to Special Government Pleader sr.39997

W.P Nos.13771 to 13774 of 2017

kj(co)
ss(15/6/2017)