IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.14663 of 2017
and
W.M.P.No.15912 of 2017

M/s. Needa Tyres,
Rep. By its proprietor
Mr.K.Tamil Polil,
No.10, Anna Salai,
Thanjavur Main Road,
Needamangalam Post,
Tiruvarur District. ... Petitioner

Vs.

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi, Tiruvarur District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in Tin No.33073862690/2012-2013 dated 31.03.2017 and the consequent order dated 15.05.2017 and quash the same as illegal, arbitrary and against the provisions of the act.

For Petitioner : Mr.K.Soundarajan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax), takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved by the order of assessment dated 31.03.2017 passed in respect of assessment year 2012-2013 and the consequential order dated 15.05.2017 rejecting the petitioner's application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner is a dealer in tyres and an Assessee on the file of the respondent under the Tamil Nadu Value Added Tax, Act 2006. A notice of proposal dated 08.03.2017 was issued to the petitioner and however, the petitioner has not chosen to file the reply. Therefore, the Assessing Officer, taking note of the fact that the petitioner has not filed the purchase invoice, has imposed the tax and penalty and passed the order of assessment. Thereafter, the petitioner filed an application for revision of assessment on 24.04.2017, by blaming his Accountant for not filing the reply. However, the respondent has rejected the said request by passing the consequential order dated 15.05.2017.

4. The learned counsel for the petitioner submitted that the sole proprietor of the petitioner's firm is an illiterate person and solely relied on the Accountant for the purpose of dealing with the tax matters and however, the Accountant has not produced the records before the respondent, even though the petitioner instructed him to do so. Therefore, he submitted that for the fault of the Accountant, the petitioner cannot be penalised. He further submitted that the petitioner is having sufficient materials viz., the purchase invoice to satisfy the Assessing Officer, if one more opportunity is given to him.

5. The learned Government Advocate for the respondent submitted that the Assessing Officer is left with no other option but to pass the assessment order, when the petitioner has not chosen to file the reply, even after receiving the notice of proposal. However, he fairly submitted that if the petitioner is in a position to produce the purchase invoices, he can very well approach the Assessing Officer and produce the same, which will be considered on its own merits by the Assessing Officer.

6. Considering the above stated facts and circumstances and considering the fact that the assessment order came to be passed only on the reason that the petitioner has not produced the purchase invoices and also considering the reasons stated by the petitioner for not filing the reply, I am of the view that the petitioner should be given one more opportunity to contest the matter before the Assessing Officer, so that the assessment order can be passed on merits. Accordingly, this writ petition is allowed and the impugned order of assessment as well as the rejection order are set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment, after giving one more opportunity to the petitioner. The petitioner shall file their reply along with necessary documents within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply and the documents, the Assessing Officer shall pass fresh order of

assessment on merits and in accordance with law, after giving due opportunity of hearing to the petitioner, within a period of four weeks thereafter. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi, Tiruvarur District.

+1cc to Mr.K.Soundarajan, Advocate, S.R.No.41806
+1cc to the Special Government Pleader(T), S.R.No.41748

W.P.No.14663 of 2017

CS IV
CA(20/06/2017)