IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.15598 of 2017
and
W.M.P.Nos.16899 & 16900 of 2017

M/s.Pollachi Mobiles,
Rep.by its Partner
H. Abdulkhar,
56/73, Venkatramanan Street,
Pollachi. ... Petitioner

Vs.

The Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi. ... Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in TIN 33612243172/2014-15, dated 14.06.2016 and quash the same as illegal and direct the respondent to consider the Form WW Audit Report filed by the petitioner for the year 2014-15 and to pass fresh orders in accordance with law.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate



O R D E R

Mr.K.Venkatesh, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order dated 14.06.2016, rejecting the request of the petitioner to accept the Audit report filed along with Form WW belatedly with

penalty. 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.

3. According to the petitioner, the audit report could not be filed on 31.12.2015 itself, being the last date as stipulated by the respondent-Department, since the petitioner's father was under medical treatment and hence the petitioner could not file the Form WW in time. However, the petitioner has filed the Form WW Audit Report on 10.02.2017 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.

4. 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, he submitted that the respondent may be directed to consider the case of the petitioner based on the Form WW submitted on 10.02.2017 and pass fresh order of assessment, after giving due opportunity of hearing to the petitioner.

5. 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.

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.''

6. 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.

7. 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.

8. 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 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mk/ms

To

The Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.43376
+1cc to the Special Government Pleader(T), S.R.No.43706

W.P.No.15598 of 2017

KK(CO)
CA(30/06/2017)