IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2017
CORAM
The Hon'ble Mr. Justice T.S.Sivagnanam
W.P.No.26070 of 2017
and
WMP.No.27685 of 2017

Tvl.Harshitha Tiles Marbles & Granites,
Rep.by its Proprietor Mr.R.Purushothaman,
213/3 A, Gingee Road,
Tindivanam, Villupuram District. ..Petitioner

Vs

The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam,
Villupuram District. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN/33884723362/2015-2016, dated 5.12.2016 and to quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.D.Vijayakumar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. With consent on either side, this Writ Petition itself is taken up for final disposal.

2. At the outset, it is to be pointed out that the petitioner has not been diligent in prosecuting the remedies available to them under the provisions of the Tamil Nadu Value Added Tax Act, 2006, as they have approached this Court, challenging the assessment order, dated 05.12.2016, for the year 2015-2016, by filing this Writ Petition, at this juncture.

3. The explanation, which is sought to be offered by the petitioner for the belated approach is that, they had entrusted their matter to a consultant, and the consultant had advised the

petitioner, stating that, the issue pertaining to the mismatch is pending for consideration before this Court, and therefore, the Assessing Officer will not consider any objections, which may be filed by the dealer/petitioner, and the petitioner earnestly believing the advise given by the consultant, had not followed up the matter, in a appropriate manner, which has resulted in an exparte proceedings. Further, it is submitted that the impugned assessment order is not a signed order, as the respondent has affixed the signature, and the signature are found in Forms 'O' and 'RR'. Therefore, it is submitted that the impugned assessment order is not an order, in the eye of law.

4. Further, the learned counsel for the petitioner submits that 50% of the disputed tax has already been paid by the petitioner, and he pleads that, one more opportunity may be granted to the petitioner to go before the Assessing Officer to substantiate their case.

5. I have heard the learned Government Advocate appearing on behalf of the respondent on the above submissions.

6. On a perusal of the impugned assessment order, it is seen that the Assessing Officer's signature is found missing, but the official seal has been affixed. This appears to be an inadvertent mistake. However, in another notice of assessment and demand, the Assessing Officer's signature was found. Therefore, on that ground the impugned assessment order cannot be invalidated. However, considering the fact that the petitioner has paid 50% of the disputed tax, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer to substantiate their case.

7. Accordingly, this Writ Petition stands disposed of, by directing the petitioner to treat the impugned assessment order as show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner's Authorized representative and redo the assessment in accordance with law.

8. In the light of the above direction, the respondent shall not initiate any coercive steps against the petitioner for recovery of balance tax and penalty as quantified in the impugned assessment order.

9. In the result, this Writ Petition is disposed of with the terms as indicated above. However, there shall be no order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

ms/sd

To

The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam,
Villupuram District.

+1 cc to Mr.D.Vijayakumar Advocate sr 71386
+1 cc to Spl Government Pleader taxes sr 71764

W.P.No.26070 of 2017

gj(co)
aa07/11/2017