IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.8900, 9587 & 9588 of 2007 &
M.P.Nos.2, 2 & 2 of 2007

C.Periasamy ... Petitioner in all W.Ps.

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary,
Dept. of Commercial Taxes and
Religious Endowments,
Fort St. George, Chennai-600 009.

2.The Appellate Asst. Commissioner (CT),
Salem.

3.The Deputy Commercial Tax Officer,
Harur, Dharmapuri District. ... Respondents in all W.Ps.

Prayer in W.P.No.8900 of 2007 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of third respondent in TNGST/Na.Ka.2536/2001 96-97 dated 28.03.2002 and quash the same as illegal.

Prayer in W.P.No.9587 of 2007 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of third respondent in TNGST/ROC/3786/99-95-96 dated 28.03.2002 and quash the same as illegal.

Prayer in W.P.No.9588 of 2007 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of third respondent in Ta.Na.Ka.602/2003 97-98 dated 30.03.2005 and quash the same as illegal.

For Petitioner : Mr.S.Sivanandam

For Respondents : Mrs.Narmadha Sampath
Special Government Pleader

COMMON ORDER

Heard Mr.S.Sivaraman, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader for the respondents.

2.The petitioner, a civil work contractor, who would have now crossed 82 years of age, is before this Court having missed the bus in not duly and diligently contesting the assessment proceedings under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act").

3.The petitioner having been left with no other remedy since the appeal petition filed by the petitioner has been rejected as time-barred, has approached this Court by filing this writ petition when recovery notice dated 17.11.2006 was issued proposing to initiate action to recover the total tax amount of Rs.4,83,434/- for all the three assessment years (1995-96, 1996-97 & 1997-98) surcharge of Rs.60,990/- and penalty of Rs.3,99,868/- and in all Rs.9,44,272/-. The petitioner after receiving the notice issued by the assessing officer, appears to have engaged the service of the sales tax practioner for attending the hearing. However, the petitioner thought it would be sufficient for him to hand over the papers to the sales tax practioner and whenver asked for, he could go and meet the practioner and give appropriate instruction on facts. The petitioner pleads that he had suffered serious heart ailment and could not follow up the matter and only much after the assessment orders were passed, the petitioner took steps for engaging the service of a Chartered Accountant and filed an appeal before the Assistant Commissioner (CT), Salem. The appeal petition was apparently time barred, as, there was delay of 752 days. The appellate authority had no power to condone such delay. Therefore, dismissed the appeal for condonation of delay by order dated 02.05.2006. In this scenario, the petitioner is before this Court.

4.When the writ petition was admitted, an interim stay was granted on condition that the petitioner pays the entire tax component for all the three assessments years. The petitioner has miserably failed in complying with the conditional order. However, it appears that till now, the Department has not initiated any effective steps for recovering the tax. The petitioner states that he owned dry lands measuring an extent of 2 acres, but otherwise his financial condition is not good.

5.As noticed above, the petitioner by now would have crossed 80 years. Thus, taking into consideration and taking note of the fact that the petitioner was a small civil contractor with meagre turnover, the petitioner can be granted some indulgence.

6.Learned Special Government Pleader appearing for the respondents would submit that the order passed by the appellate authority is perfectly valid, since the appeal petition was filed beyond the condonable period of limitation. No doubt, it is true that the appeal could not have been entertained as the appellate authority had no power to condone such delay of 752 days. However, as pointed out and taking note of the other factual circumstances and also the fact that the third respondent has not enforced the recovery of tax dues, pursuant to impugned assessment proceedings, one indulgence can be granted to the petitioner, simultaneously protecting the interest by the revenue. This order is passed considering the peculiar facts and circumstances of the case, making it clear that it shall not be treated as a precedent.

7.In the light of the above, there will be a direction to the petitioner to pay 25% of the disputed tax for each of the assessment years within a period of eight weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, the petitioner will be entitled to treat the assessment orders dated 28.03.2002 (1996-97 & 1995-96) and 30.03.2005 (1997-98) as show cause notices and submit their objections within a period of 10 days thereafter. If, on the other hand, the petitioner does not comply with the conditional order, the benefit of this Court will not enure to the petitioner and the writ petitions would stand dismissed automatically without any further reference to this Court. In such event, the third respondent is empowered to initiate recovery proceedings for recovery of the tax, surcharge and penalty as quantified in the impugned assessment order. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar [CS III]

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Secretary,
The Government of Tamil Nadu,
Dept. of Commercial Taxes and
Religious Endowments,
Fort St. George, Chennai-600 009.

2.The Appellate Asst. Commissioner (CT),
Salem.

3.The Deputy Commercial Tax Officer,
Harur, Dharmapuri District.

+1CC to M/S.S.SIVANANDAM Advocate SR.NO.67966

W.P.Nos.8900, 9587 & 9588 of 2007

NRI[CO]
MK:27/10/2017