IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27746 & 27747 of 2017 and
W.M.P.Nos.29714 to 29717 of 2017

Tvl.Farhas Exports,
Represented by its Proprietrix,
Mrs.Noor Baba,
No.64, Bazaar Street, Pernambut. ... Petitioner in both WPs.

Vs.

The Deputy Commercial Tax Officer,
Gudiyatham (West). ... Respondent in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari falling for the records of the respondent in TIN No.3311433303/2012-13 & Tin No. 3311433303/2013-14 respectively dated 20.02.2015 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent. By consent on either side, the writ petition is taken up for disposal.

2.The petitioner is aggrieved by the assessment orders passed by the respondent for the years 2012-2013 and 2013-2014. The petitioner's assessments for the relevant years which were deemed to be completed in terms of Section 22(2) of the Act was sought to be revised under Section 27 of the Act, based on details which have been culled out from the official website of the Department stating that there is mismatch between the returns filed by the petitioner and that of the other end dealer. Though these notices dated 29.01.2015 were received by the petitioner, the petitioner did not care to file their objections. The respondent waited for almost a month and since there was no response, confirmed the proposal in the notice. The petitioner thereafter put the matter in cold storage and did not take any steps for filing an appeal against the assessment order or approaching his Assessing Officer.

3.After more than two years, now these writ petitions are filed stating that in terms of the decisions of this Court in M/s.JKM Graphics Solutions Private Limited V. The Commercial Tax officer, Chennai in W.P.No.105 of 2016 etc. batch dated 01.03.2017, the respondent ought to have furnished details and necessary enquiry ought to have been conducted etc. Though the decision lays down the guidelines to the Assessing Officer as to how to deal with the matters pertaining to mismatch, the same cannot be applied to the petitioner at this juncture, on account of the petitioner's conduct, that is to say that the petitioner did not respond to the pre-revision notice dated 29.01.2015. Therefore, the petitioner cannot plead that at this juncture, the said Judgment should be applied to the facts of this case. This is one side of the matter. The other being, though the assessment orders were passed on 20.02.2015 quantified the tax and penalty, till date the amounts have not been recovered. For such reason alone, this Court is inclined to give one opportunity to the petitioner to go before the Assessing Officer subject to certain conditions.

4.In the light of the above discussions, these Writ Petitions are disposed of, by directing the petitioner to pay 15% of the disputed tax of each of the assessment years and such payment shall be made within a period of 15 days from the date of receipt of copy of this order. If the petitioner complies with the condition, he is entitled to treat the impugned assessment orders as a show cause notice and submit their objections within a period of 15 days thereafter. On receipt of objections, the respondent shall afford an opportunity of personal hearing and redo the assessment. In the event, the petitioner fails to comply with the conditions, the benefit of this order will not enure to the petitioner and the writ petition will be dismissed automatically. No costs. Consequently, connected miscellaneous petitions are closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Deputy Commercial Tax Officer,
Gudiyatham (West).

- 1 cc to Mr.Adithya Reddy, Advocate Sr.No. 76677
- + cc to The Government Pleader Sr.No. 77072

VS 22/11/2017