IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.32964 of 2007
and M.P.No.2 of 2007

Tvl. Geetha Soap Works,
Represented by its Proprietor,
Mr.T.Senthilkumar,
14/17, Kattur Railway Gate,
Opposite, Mettupalayam - 641 301. ...Petitioner

Vs

1.The Special Committee under
Section 16-D of the Tamil Nadu
General Sales Tax Act, 1959,
2nd Floor, Office of the Special
Commissioner and Commissioner
of Commercial Taxes, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Mettupalayam Assessment Circle,
Mettupalayam. ...Respondents

Prayer: Writ Petition filed under Article 226 of The Constitution of India seeking to issue a Writ of Certiorari calling for the records on the files of the 1st respondent in S.C.P.No.47/06 (CCT/M2/49526/05) dated 29.09.2006 and connected proceedings of the 2nd respondent in TNGST 2041425/99-2000 dated 06.09.2001 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. On perused the materials placed on record including the para wise instructions given by the Assessing Officer to the learned Additional Government Pleader vide letter dated 01.07.2007, the petitioner did not challenge the assessment order dated 06.09.2001 by filing an appeal within the time provided in the Tamil Nadu General Sales Tax Act, 1959.

2. Belatedly the petitioner approached the Special Committee under Section 16(D) of the Act by filing a petition dated 10.08.2005 before the Special Committee. Two points were canvassed by the petitioner, namely (i) that the Assessing Officer failed to give copies of the records and statements of third parties, ii) the assessment order is pre-determined and pre-judged. The Special Committee called for the original records and found that the petitioner never made a request for furnishing copies of records, statements etc. Therefore, the petitioner's application under Section 16(D) of the Act was dismissed by the impugned order. I find there is no error in the order passed by the Special Committee, as the Special Committee recorded a factual finding that the petitioner did not request for records and statements.

3. The writ petition has been entertained, however, there is no interim order, the original assessment file is in the hands of the learned Government Advocate. Though the assessment order was passed in 2001 not a single paise has been recovered by the Assessing Officer from the petitioner.

4. Thus, considering the peculiar facts and circumstances of the case, I am of the view that one more opportunity can be granted to the petitioner to go before the Assessing Officer, subject to stringent conditions.

5. In the light of the above, while setting aside the impugned order the matter is remanded to the Assessing Officer, subject to the following conditions.

(i) The petitioner shall pay 25% of the disputed tax to the 2nd respondent within a period of three weeks from the date of receipt of a copy of this order.

(ii) If the petitioner complies with this condition, he is entitled to treat the assessment order dated 06.09.2001 as a show cause notice and submit their objections within 15 days thereafter.

(iii) On receipt of the objections, the 2nd respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law.

(iv) If the petitioner fails to comply with the condition, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed.

6. The learned Government Advocate is directed to immediately forward the original assessment file to the 2nd respondent.

7. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is also closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rna

To

1.The Special Committee under
Section 16-D of the Tamil Nadu
General Sales Tax Act, 1959,
2nd Floor, Office of the Special
Commissioner and Commissioner
of Commercial Taxes, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Mettupalayam Assessment Circle,
Mettupalayam.

+ 1 cc to R.Senniappan, Advocate sr.no.75668

+ 1 cc to Special Government Pleader [Taxes] sr.75896

W.P.No.32964 of 2007

RR 17/11/2017