IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.37303 and 37304 of 2007
and M.P. Nos.1 and 1 of 2007

M/s.S.K.Decorations,
898, Raja Street,
Coimbatore - 640 001
Represented by its
Partner Mr.Su.Sirajdeen ... Petitioner in both WPs.

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial taxes &
Religious Endowments,
Fort St.George, Chennai - 600 009.

2.The Deputy Commercial Tax Officer,
Oppanakara Street Circle,
Coimbatore - 641 018. ... Respondents in both WPs.

Prayer in W.P.No.37303 of 2007: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent made in its proceedings in Form 19 in TNGST 1861413/03-04 dated 30.11.2007 and quash the same and direct the 2nd respondent to supply the copies of documents as required by the petitioner from the seized documents that are in the custody of the 2nd respondent and thereafter to pass the assessment order for year 2003-2004 after giving due opportunity to the petitioner observing the principles of natural justice.

Prayer in W.P.No.37304 of 2007: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent made in its proceedings in Form 19 in TNGST 1861413/03-04 dated 30.11.2007 and quash the same and direct the 2nd respondent to supply the copies of documents as required by the petitioner from the seized documents that are in the custody of the 2nd respondent and thereafter to pass the assessment order for year 2004-2005 after giving due opportunity to the petitioner observing the principles of natural justice.

For Petitioner (in both WPs.)	:	Mr.S.Silambanan Senior Counsel for M/s.Silambanan Associates
For Respondent (in both WPs.)	:	Mr.S.Kanmani Annamalai Additional Government Pleader

COMMON ORDER

Heard Mr.S.Silambanan, learned senior counsel appearing for M/s.Silambannan Associates, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner who is a registered dealer on the file of the second respondent has filed this writ petition challenging the assessment orders dated 30.11.2007 for the assessment years 2003-2004 and 2004-2005 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) which are at best of judgment assessments. The only reason for approaching this Court challenging the impugned orders of assessment is that the petitioner's request for furnishing the copies of the seized records, namely, D7 records has been rejected by the Assessing Officer and the proposal made in the show cause notice has been confirmed.

3.From the para-wise instructions given by the second respondent to the learned Additional Government Pleader vide letter dated 03.01.2011, it is seen that five summons were issued to the petitioner to appear for a hearing, namely, on 02.02.2005, 28.02.2005, 10.05.2005, 31.01.2006 and 21.02.2006. But the petitioner did not appeared before the second respondent and did not co-operate in the assessment proceedings. In fact the conduct of the petitioner has been noted by the respondent and his non-cooperation has also been recorded in the impugned assessment order. However, in the impugned assessment order the respondent would admit that the petitioner has filed his objections to the show cause notice on 20.07.2007, i.e. subsequent to the five dates on which hearing was fixed. However, I am unable to agree with the reasons given by the second respondent for not furnishing the copies of D7 records. It has been stated by the second respondent that if the copies are furnished, the petitioner will manipulate the records. However, the question of manipulation will not arise if the original records are retained by the second respondent and photocopies are produced to the petitioner. If this procedure had been adopted by the second respondent, this very litigation itself could have been avoided and the correct rate of tax could have been recovered from the petitioner and the matter would not be languishing in the Court for the past ten years.

4.Thus, this Court is of the view that to enable the petitioner to contest the matter on merits, no prejudice would be caused to the revenue if the copies of D7 records recovered from the petitioner's business premises are furnished at the cost of the petitioner.

5.Accordingly, the writ petitions are disposed of with the following directions:

The second respondent is directed to furnish the copies of D7 records which were recovered from the petitioner by the enforcement after the petitioner remits the requisite costs for the same. This direction shall be complied with within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the D7 records, the petitioner shall treat the impugned assessment orders as show cause notices and submit their objections within a period of fifteen days from the date on which the copies of D7 records are received by the petitioner. On receipt of the objections, the second respondent is directed to afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

04.12.2017

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
cse

To

1.The Secretary to Government,
Department of Commercial taxes &
Religious Endowments,
Fort St.George, Chennai - 600 009.

2.The Deputy Commercial Tax Officer,
Oppanakara Street Circle,
Coimbatore - 641 018.

T.S.SIVAGNANAM, J.

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