IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.3951 of 2007
and
M.P.No.1 of 2007

M/s.Palaniappal Industries (Defunct)
Rep. By its Partner,
P.S.Palani, No.1420, 13th Main Road,
Anna Nagar West, Chennai - 600 040. ... Petitioner

Vs.

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai - 600 108. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the respondent in his impugned notice in Rc.3504/94/A3 dated 10.6.2005 quash the same.

For Petitioner : Mrs.R.Hemalatha

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

ORDER

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is aggrieved by a notice issued by the respondent dated 10.06.2005 demanding a sum of Rs.1,64,795/- being the balance amount of penal interest payable by the petitioner on the sale of REP license as tax was not remitted in time. A total amount of penal interest demanded under Section 24 (3) of the Tamil Nadu General Sales Tax Act was Rs.6,65,245/- for the years 1991-1992 to 1993-1994. Out of the said amount, Rs.5,00,500/- was collected from the petitioner on 06.12.2000 by attaching their bank account, the remaining balance amount is demanded in the impugned notice.

3.The learned counsel for the petitioner referring to a decision of the West Bengal Taxation Tribunal, in Shivdam Wood Products Private Limited V. Commercial Tax Officer, Bally Charge and others [Vol.112 STC 87] submitted that the interest can be leviable only from the date of the decision of the Hon'ble Supreme Court in the case of J.K.Synthetics Ltd., V. Commercial Taxes Officer reported in [1994] 94 STC 422 (SC) i.e. from 01.05.1996.

4.Admittedly, the petitioner is before this Court challenging a notice of demand and at this juncture, the question of considering as to whether the decision of the West Bengal Tribunal can be applied to the facts of the case is too early an issue to be decided. It is no doubt true that the petitioner did not have any prior notice before the impugned recovery notice was issued. Thus, in my view, the petitioner should be permitted to raise all these objections before the respondent and take the matter to the logical end.

5.At the time when the writ petition was admitted, the petitioner was directed to pay a sum of Rs.82,398/-. This conditional order has been complied with by the petitioner. Thus, considering the facts and circumstances of the case, the petitioner is directed to treat the impugned demand notice as a show cause notice and submit their objections to the respondent within 30 days from the date of receipt of copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and pass a speaking order on merits and in accordance with law.

6.The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai - 600 108.

2 The Record Keeper,
ER Section, High Court, Madras.

+1cc to Mr.R.Hemalatha Advocate SR.No.73204

+1cc to Special Government Pleader SR.No.73232

W.P.No.3951 of 2007

SDR 17.11.2017