IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.20669 of 2018
and
WMP.No.24291 of 2018

Mahalakshmi G .. Petitioner

Vs.

The Commercial Tax Officer
Office of the State Tax Officer
Palacode Assessment Circle. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent issued the order in TIN : 33566395446, a demand notice in Form 'O' under Rule 8[4], 8[6], 14[18], 14[21], 14[22] and Form 'RR' under Rule 16[5] of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2016-2017 dated 28.06.2018 and consequently proceedings issued in ROC.No.A3/894/2018 dated 28.06.2018 under Section 45 of the Tamil Nadu Value Added Tax in TIN : 33566395446, and to quash the same as being violative of principles of natural justice, contrary to the provisions of the Tamil Nadu Value Added Tax, Act, 2006.

For Petitioner: Mr.G.M.Anantha Kumar
For Respondent : Mr.K.Hariharan
Additional Government Pleader (Tax)

O R D E R

The petitioner-Assessee under the respondent, is aggrieved against the order of assessment dated 28.06.2018 passed in respect of the assessment year 2016-2017 and consequential demand notices.

2. Mr.K.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage.

3. Heard both sides.

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4. The petitioner questioned the order of assessment by raising very many grounds on the merits of the assessment. It is not in dispute that before passing the order of assessment, a notice of proposal was issued on the petitioner and however, she has not filed any reply nor utilised an opportunity of personal hearing, as given by the Assessing Authority. The above said fact is evident on the face of the assessment order itself.

5. The learned counsel for the petitioner is not disputing the above said fact. However, he wants to contest the matter by raising the grounds, which are touching upon the order of assessment.

6. Admittedly, as against the order of assessment, a statutory appellate remedy is available to the petitioner, which she has not availed. On the other hand, she has filed the present writ petition. In my considered view, having not filed any objections and utilised an opportunity of personal hearing, the petitioner is not justified in raising all the contentions on the merits of the assessment before this Court, by filing the writ petition, without resorting to file an appeal before the Appellate Authority, when admittedly, the said authority is also a fact finding authority. Therefore, this Court is not inclined to entertain the writ petition.

7. The learned counsel for the petitioner alternatively submitted that the petitioner would file the statutory appeal before the Appellate Authority, if sufficient time is granted to her. He further contended that after passing the order of assessment, a sum of Rs.1,65,117/- was recovered from the Bank Account of the petitioner on 30.06.2018 itself. Therefore, he contended that the petitioner should be given credit of such amount when she has to comply with the statutory requirement of making 25% of the demand at the time of filing the appeal. All these contentions can be raised by the petitioner at the time of filing the appeal as well as stay petition before the Appellate Authority. Thus, this writ petition is disposed of, in the following terms:

(a) The petitioner is permitted to file an appeal before the Appellate Authority within a period of three weeks from the date of receipt of a copy of this order.

(b) On receipt of such appeal, the Appellate Authority shall consider the same on its own merits and in accordance with law, without reference to the period of limitation.

(c) The Appellate Authority shall pass the order in the appeal, within a period of

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six weeks, thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Office of the State Tax Officer
Palacode Assessment Circle.

+1cc to Mr.G.M.Ananthakumar, Advocate SR.NO.55714
+1cc to Special Government Pleader SR.NO.55485

SR.NO.(CO)
sm:27.8.2018

W.P.No.20669 of 2018

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