In the High Court of Judicature at Madras

Dated : 10.1.2018

Coram

The Hon'ble Mr.Justice T.S.SIVAGNANAM

W.P.Nos.555 to 559 of 2018 & W.M.P.Nos.680 to 694 of 2018

K.Anbarasan ...Petitioner in WP.Nos.555 to 557 of 2018

M.Jayachandran ...Petitioner in WP.Nos.558 & 559 of 2018

Vs.

The Commercial Tax Officer,
Villupuram-I Circle, Villupuram. ...Respondent in
Villupuram District
all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in its impugned proceedings made respectively in TIN 33064681812/2006-2007, 33064681812/2009-10 and 33064681812/2010-11 (WP.Nos.555 to 557 of 2018) and TIN 33594681860/2009-10 and TIN 33594681860/2010-11 (WP.Nos.558 & 559 of 2018), all dated 22.4.2016 and quash the same as illegal and arbitrary.

For Petitioners : Mrs.R.Hemalatha
For Respondent : Ms.Dhana Madhri, GA

COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioners are before this Court challenging the orders of assessment for the relevant years namely 2006-07 to 2010-11 as well as 2009-10 and 2010-11 respectively. The substantial part of the mistake lies with the dealers, as they did not respond to the revision notices respectively dated 01.4.2016 and 06.4.2016.

3. The respondent issued notices dated 01.4.2016 and 06.1.2016 pointing out that on verification of the returns filed

for the relevant years, it was seen that the petitioners had not filed the agreement copies for the work undertaken by them. Therefore, the petitioners were instructed to file the agreement copies immediately, failing which, the best of judgment revision orders would be passed under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

4. The petitioners, though received the notices, did not produce the agreement copies. Therefore, the respondent completed the assessment and confirmed the proposal in the notices respectively dated 01.4.2016 and 06.4.2016. After more than one and half year, the petitioners have filed these writ petitions because the respondent issued attachment notices for attaching the petitioners' properties.

5. These writ petitions should not have been entertained at the first instance, since the petitioners did not explain the gross delay in approaching this Court, especially, when the limitation prescribed for filing the appeals was over and no appeals could have been filed by the petitioners.

6. The learned counsel for the petitioners submits that it is true that the mistake has been committed by the dealers by not filing the objections. The petitioners are dealers, who have been carrying on works contract for Government Departments, such as Local Bodies and the Block Department Officer of the concerned local body has given requisite certificates and made endorsement in the ledger entries and the petitioners may be granted one opportunity to go before the respondent and place those documents. The learned counsel for the petitioners has relied on the circular issued by the Principal Secretary/Commissioner of Commercial Taxes in Circular No.54/ 2014 dated 14.11.2014 to substantiate his contention that M returns can be perused by the Assessing Officer while considering the claim for exemption.

7. On a perusal of the income and expenditure accounts filed by the petitioners under the Income Tax Act, 1961 for the relevant assessment years, it is seen that substantial portion of the work has been done by the petitioners for various local bodies and the petitioners have given the contract numbers and also mentioned about the departmental supply of materials wherever it has been given. It may be true that the petitioners did not produce the copies of the contract agreements. However, the petitioners having transacted business with the Governmental bodies, the respondent can accept any authenticated record given by the concerned authority, for whom, the work has been performed by the petitioners and this, in my view, would be sufficient to examine the correctness of the transactions reported by the petitioners in their respective turn over. To

enable the petitioners to be entitled to such an opportunity, they should be put on terms.

8. Accordingly, the writ petitions are disposed of with a direction to the respective petitioner to pay 15% of the dispute tax for each of the assessment years as computed in the impugned assessment orders, within a period of 15 days from the date of receipt of a copy of this order. If such payment is made, the petitioners are entitled to treat the impugned orders as show cause notices, submit their objections and appear before the respondent by producing documents duly attested by the concerned officers, which shall be examined by the respondent and the assessment shall be redone on merits and in accordance with law. The petitioners are at liberty to rely upon Circular No.54/2014 dated 14.11.2014, when the assessment proceedings are being taken up for consideration. However, if the petitioners fail to comply with the conditional order in paying 15% of the disputed tax for each of the assessment years, the benefit of this order would not enure to the petitioners and the writ petitions would stand dismissed automatically, leaving it open to the petitioners to work out their remedies in accordance with law. The attachment of the properties of the respective petitioner shall continue till further orders are passed in terms of the above direction. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer, Villupuram-I Circle,
Villupuram.
Villupuram District

+1 cc to Special Govt Pleader sr 2426
+5 ccs to Mr.R.hemalatha Advocate sr 2446 & 2447

WP.Nos.555 to 559 of 2018&
WMP.Nos.680 to 694 of 2018

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