IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.30853 of 2017
and W.M.P.No.33776 of 2017

Orders reserved on	Orders pronounced on
12.07.2018	18.07.2018

Tvl.Sri Kumaran Hardwares,
Rep., by its Prop., D.Sundar Rajan,
No.38, Medavakkam Main Road,
Chennai - 600 117. .. Petitioner

vs.

1.The State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Department of Commercial Taxes,
Fort St., George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

3.Assistant Commissioner (ST)
Madipakkam Assessment Circle,
26-D, 6th Cross Street, 4th Main Road,
Medavakkam,
Chennai - 600 100. .. Respondents

Petitions filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent in his proceedings in TIN 33330981356/2010-11, dated 10.11.2017, received by the petitioner on 10.11.2017 and quash the same and to direct the third respondent to furnish the copies of the documents as requested by the petitioner his representation dated 10.10.2017 and 14.10.2017.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Ms.G.Dhana Madhri, G.A.,

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ORDER

The petitioner, who is the registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), on the file of the third respondent, has filed this Writ Petition challenging the assessment order for the year 2010-11, under the said Act, dated 10.11.2017.

2. Mr.M.MD.Ibrahim Ali, learned counsel appearing for the petitioner submitted that the Assessing Officer has mechanically followed the departmental website and the information downloaded from it without even making a cross check with the figures available with its counter parts of the department and therefore, the impugned proceedings is the outcome of non-application of mind. Further, it is submitted that the direction issued by this Court in an earlier Writ Petitions namely W.P.Nos.26442 & 26443 of 2017, dated 10.10.2017, has not been complied with. Apart from that, the direction issued by the Court in the decision reported in M/s.JKM Graphics Solutions Private Limited, vs. The Commercial Tax Officer, reported in 99 VST 343, have not been followed.

3. Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondents submitted that the dates and events as mentioned in paragraph 6 of the counter affidavit will clearly demonstrate that the petitioner has been dragging on the matter and no indulgence be granted to the petitioner. Further, it is submitted that sufficient opportunity has been granted to the petitioner; all documents sought for have been furnished and the direction issued in the earlier Writ Petitions have been scrupulously followed and therefore, the Writ Petition may be dismissed and the petitioner should be directed to avail alternate statutory remedy.

4.Heard the learned counsels appearing for the parties and perused the materials placed on record.

5. The petitioner has come before this Court mainly on the ground that the directions issued by this Court in the earlier Writ Petitions were not followed. The petitioner had filed W.P.No.21507 of 2015, challenging the order passed by the third respondent, dated 30.04.2015, which is a revised assessment order for the assessment year 2010-14. The Writ Petition was disposed of by order dated 18.08.2015, and the matter was

remitted back to the respondent for consideration afresh. The petitioner was permitted to file additional documents and on filing such additional documents, the respondent was directed to afford an opportunity of personal hearing and pass orders on merits and in accordance with law. Thereafter, notices were issued to the petitioner on 09.10.2015, 09.03.2016 & 24.08.2016, directing the petitioner to forward the documents and a final notice was issued on 24.10.2016. Thereafter on 11.04.2017, notice was issued to the petitioner to produce relevant documents and the date of personal hearing was also fixed. The petitioner made a request for extension of time by one month by representation dated 12.04.2017. This request was not acceded to and final remainder notice was issued dated 19.04.2017. The petitioner sent a reply stating that they have filed Writ Petition in W.P.No.41142 of 2017 against the notice dated 24.10.2016, and requested the matter to be kept in abeyance till the disposal of the Writ Petition. On 05.06.2017, the third respondent sent an intimation to the petitioner that the urgent notice dated 24.10.2016 has been withdrawn and fixed a date for personal hearing on 12.06.2017. The Writ Petition in W.P.No.41142 of 2016, was disposed of by order dated 04.07.2017, with a direction to the third respondent to comply with the direction issued in W.P.No.21507 of 2015. Consequent upon such direction, the third respondent issued notice dated 22.09.2017, directing the petitioner to furnish the documents and to appear for personal hearing on 27.09.2017. The petitioner sought two weeks' time by representation dated 25.09.2017, stating that he is indisposed. By notice dated 28.09.2017, the petitioner was directed to appear on 12.10.2017. On 10.10.2017, the petitioner files a reply seeking for copies of details taken from annexure II of the sellers along with copies of invoices, details of movement of goods etc. By notice dated 12.10.2017, the petitioner was informed that all the details sought for have already been furnished, but once again, the same were furnished along with notice and personal hearing was fixed on 20.10.2017. Reply dated 14.10.2017, was given by the petitioner, wherein they stated that the records for the assessment year 2010-11, were destroyed during December 2015 floods, and unable to produce the original documents and submitted copies of purchase and sales registers. Ultimately,, the impugned assessment order has been passed on 10.11.2017. The third respondent has stated that the petitioner had not furnished details of opening stock and closing stock; they had declared sales turnover of Rs.13,83,243/- for the year 2010-11, as against the total purchases of Rs.93,78,887/- and no documentary evidence was furnished, to prove that the purchases were not effected by them; on going through the above facts, it is evidently clear that the petitioner was not cooperating in the assessment proceedings. After the receipt of the details, which were given by the department, according to them were given twice. The petitioner should have taken steps to reconcile the statement. Unfortunately, the petitioner has been repeatedly seeking for adjournments. If according to the petitioner some more documents are required, then it is the duty on the part of petitioner to appear before the Assessing Officer and reconcile and explain the transactions for which the details have been furnished. Thereafter, the petitioner can seek for additional details and for submit their explanation. Thus, the conduct of the dealer has not convinced this Court to exercise its extraordinary jurisdiction to interfere with the assessment order and all points which the petitioner has raised, have to be raised before the Appellate Authority.

6. In the result, the Writ Petition is dismissed as not maintainable and the petitioner is granted 30days' time from the date of receipt of a copy of this order to file an appeal before the Appellate Deputy Commissioner Commercial Cases (East), Chennai and if such an appeal is filed within a time limit, the appellate authority shall not reject the appeal on the ground of limitation. Since, the Appellate Authority is not a party to the Writ Petition, Registry is directed to communicate a copy of the order to the Appellate Deputy Commissioner Commercial Cases (East), Chennai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pbn

To

1.The Secretary to Govt.,
Department of Commercial Taxes,
Fort St., George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
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3.Assistant Commissioner (ST)
Madipakkam Assessment Circle,
26-D, 6th Cross Street, 4th Main Road,
Medavakkam, Chennai - 600 100.

4. Appellate Deputy Commissioner
   Commercial Cases (East), Chennai.

+1cc to Mr.IBRAHIM ALI, Advocate, S.R.No. 47454
+1cc to the Government Pleader, S.R.No. 48145

order made in
Writ Petition No.30853 of 2017

SPD(CO)
TR(31/07/2018)