IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Contempt Petition No.2155 of 2017
and
W.P.No.4356 of 2018

Contempt Petition No.2155 of 2017:-

M/s.Stanes Motors (South India) Ltd.,
Rep. by its Director,
1596, Trichy Road, Coimbatore-641 018.
... Petitioner

-vs-

1.Sri.S.Mahesh,
Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore-18.

2.Mr.S.Pandiarajan,
Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore.

3.Assistant Commissioner (CT),
Tirupur South Circle, Tirpur.
... Respondents

(Respondents 2 and 3 - suo motu impleaded by order dated 20.04.2018 in Cont.P.No.2155/2017)

Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondent for not complying with the order of this Court passed in Writ Petition No.24573 of 2016 dated 01.02.2016.

For Petitioner : Mr.B.Raveendran

For Respondents : Mrs.G.Dhanamadhri

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W.P.No.4356 of 2018:-

M/s.Stanes Motors (South India) Ltd.,
Rep. by its Director,
1596, Trichy Road, Coimbatore-641 018.
... Petitioner

-vs-

The Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in his proceedings in Roc.No.728/2010/A3 dated 10.01.2018 and to quash the order dated 10.01.2018 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

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C O M M O N   O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondents.

2. Contempt Petition No.2155 of 2017 has been filed alleging willful disobedience of the order and direction issued by this Court in W.P.No.24573 of 2016 dated 01.12.2016. In fact, the said writ petition was a second round of litigation and technically third round because, in between there were review applications filed by the Department. The writ petition in W.P.No.24573 of 2016 was filed challenging the notice of the respondent, Assistant Commissioner (CT), Trichy Road Assessment Circle, Coimbatore, dated 02.06.2016. This notice was pursuant to the order passed by this Court in W.P.Nos.2965 to 2970 of 2010. These writ petitions were disposed of by order dated 22.03.2010, against which the Revenue filed review applications to review the said order. The review applications were allowed by order dated 27.01.2016, and the order passed in W.P.Nos.2965 to 2970 of 2010 was recalled and the writ petitions were restored to the file of this Court to be heard and decided afresh. Subsequently, the writ petitions were heard and were disposed of by common order dated 06.04.2016 directing the respondent / Assessing Officer to consider the petitioner's applications / representations for refund of the alleged excess entry tax paid. The respondent / Assessing Officer was directed to conduct an enquiry in the matter, after affording an opportunity of personal hearing in which the

petitioner was entitled to place all records to the satisfaction of the Assessing Officer.

3. Further, the Court observed that in the event the Assessing Officer coming to the conclusion that the petitioner is entitled for refund for adjusting the tax payable under the Tamil Nadu General Sales Tax Act, 1959, appropriate orders shall be passed within a time frame. Thus, in terms of the above direction, the respondent / Assessing Officer was required to consider the applications / representations for refund of the alleged excess entry tax paid and an enquiry was directed to be conducted. Pursuant to such direction, notice dated 02.06.2016 was issued, which was impugned in W.P.No.24573 of 2016. In the said notice, the respondent sought for certain records.

4. The learned counsel appearing for the petitioner submitted that some of the records sought for could be produced, which was recorded by the Court and a direction was issued and also there was a specific direction to afford an opportunity of personal hearing to the petitioner and accordingly, the said writ petition stood disposed of by order dated 01.12.2016. The operative portion of the order reads as follows:-

> "4. *Pursuant to the direction, the impugned notice has been issued. The*

respondent cannot be faulted for having issued the impugned notice in the light of the orders passed by this Court but the impugned notice has been challenged by the petitioner on the ground that certain information and records sought for are impossible of compliance. The respondent has sought for the following records.

1) Copies of Monthly returns filed under TNGST Act 1959 and Entry Tax Act 1990 for the period from 1992-93 to 1997-98.

2) Xerox copies of Assessment orders, passed during the period from 1992-93 to 1997-98 under the above Two Act.

3) Details of Payments of Tax and Entry Tax for the above period/year-wise/separately.

4) Detailed stock inventory details for the arrival/Receipt of Motor Vehicle, from other States, sale of vehicle, with opening & closing stock details both in Numbers and value for the above period/year-wise/separately.

Details of Stock Inventory year-wise.

5) Copies of your earlier Application letter in this regard/year-wise/separately.

6) Any other support recorded evidence if any.

5. The learned senior counsel appearing for the petitioner, on instructions, submitted that insofar as Sl.Nos.2, 3 and 5, the petitioner would be able to comply with. However, the monthly returns are not in *possession of the petitioner since they relate to the period 1992-93 to 1997-98. Similarly, it is submitted that the details of stock inventory, etc in Sl.No.4 cannot be culled out now and those details were considered while passing the assessment orders.*

6. In the light of the above, there will be a direction to the petitioner to produce the documents in Sl.Nos.2, 3 and 5 and based on those documents, the respondent shall enquire into the matter by affording an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."

5. Thus, what the respondent was required to do is to enquire into the matter upon the petitioner producing the documents in Serial Nos.2, 3 and 5 (supra), afford an opportunity of personal hearing and pass a reasoned order on merits and in accordance with law. Unfortunately, the respondent did not understand the purport and import of the order and without conducting enquiry and affording personal hearing, passed an order dated 10.01.2018, which is

impugned in W.P.No.4356 of 2018.

6. The petitioner has filed Contempt Petition No.2155 of 2017 to punish the respondent for willful disobedience of the order in W.P.No.24573 of 2016 dated 01.12.2016 and in order to get over any technical objection, a separate writ petition has been filed challenging the order dated 10.01.2018. Both the contempt petition and the writ petition were clubbed together and were heard on several dates. On the last hearing, i.e., on 08.06.2018, the learned Additional Advocate General appeared in the matter and the Court expressed that there are *prima facie* materials to initiate action for contempt and she assured the Court that she will advice the Department properly. Accordingly, when the matter was heard today, the following officers were present before this Court:-

(i) Mr.S.Karthick,
Deputy Commissioner (LTU), Coimbatore.

(ii) Mr.P.Gnanamoorthy,
Deputy Commissioner (Zone - 1), CBE.

(iii) Mr.S.Pandiarajan,
Assistant Commissioner, Tirupur-South.

(iv) Mr.S.Mahesh,
Assistant Commissioner, Trichy Road Circle.

7. An affidavit has been filed by the Assessing Officer, Assistant Commissioner, Trichy Road Assessment Circle, Coimbatore in which he has tendered unconditional apology and in paragraph 7 of the affidavit, the Assessing Officer has undertaken to recall the order passed in the said proceedings and pass a speaking order after giving personal hearing to the petitioner in due compliance of the directions issued by this Court in W.P.No.24753 of 2016 dated 01.12.2016.

8. Mrs.G.Dhanamadhri, learned Government Advocate submitted that the respondents may be permitted to take a decision on merits, as the local sales tax payable is more than the entry tax and referred to the decision of this Court in the case of **R.Gandhi vs. State of Tamil Nadu and Others** reported in **(2008) 13 VST 390 (Mad.)**, for the proposition that levy of entry tax under the Tamil Nadu Tax Entry of Motor Vehicles into Local Areas Act, 1990 (Act No.13 of 1990) is not compensatory. In any event, this Court did not take any decision in the earlier writ petition, as the direction issued to the Authority was to conduct an enquiry into the matter. This having not been done by the respondent before passing the order dated 10.01.2018. It would vitiate the order apart from making

the concerned officers liable for contempt. However, I am satisfied that the Officers of the Department have now understood the seriousness of the issue, which is evident from the affidavit dated 12th June 2018 filed by the Assessing Officer. Thus, the affidavit is taken on record and the apology tendered by the Officer is accepted and the action for contempt is dropped. Since the order dated 10.01.2018, is not in consonance with the direction issued in the earlier writ petition and the Assessing Officer having filed an affidavit dated 12.06.2018 undertaking to withdraw the order, this Court is of the view that the said order cannot be allowed to stand any longer.

9. In the result,

(i) Contempt Petition No.2155 of 2018 is closed by accepting the unconditional apology and the affidavit filed by the Assessing Officer. The personal appearance of the Officers is dispensed with.

(ii) Writ Petition No.4356 of 2018 is allowed, the order dated 10.01.2018, is set aside and the matter is remanded to the respondent for a fresh decision in accordance with law after affording an opportunity of personal hearing. The Deputy Commissioner (LTU), Coimbatore had stated that for two years, i.e., 1996-97 and 1997-98, the petitioner was an assessee on the file of the Large Tax Payers' Unit, Coimbatore and thereafter, once against transferred to the parent unit, viz., the respondent. To enable the respondent to pass fresh orders, the Deputy Commissioner (CT) (LTU), Coimbatore is directed to handover the files pertaining to the petitioner for the assessment years 1996-97 and 1997-98 to the respondent / Assessing Officer to comply with the directions issued by this Court.

(iii) The above direction shall be complied with within a period of four weeks from the date of receipt of a copy of this order. No costs.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

abr

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

PS/07/02/2019

To

1.The Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore-18.

2.The Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore.

3.The Assistant Commissioner (CT),
Tirupur South Circle, Tirpur.