IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9907 of 2018
and W.M.P.No.11838 of 2018

M/s.Thirumurugan Traders,
Rep. by its Proprietrix, M.Kasthuri,
No.4/177, Naachanapatti H,
Thottambatty Post, Harur-636 903,
Dharmapuri. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Group VII Enforcement (North),
Greams Road, Chennai-600 006.

2.The Joint Commissioner (CT),
Enforcement-I, Chennai.

3.The State Tax Officer,
Harur Assessment Circle, Harur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent in his proceedings in TIN No.33773343355/2011-12, to quash the order dated 28.03.2018, received by the petitioner on 12.04.2018, and to direct the respondents to follow procedure contemplated under the act by giving personal hearing etc.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mrs.Narmadha Sampath,
Additional Advocate General
assisted by Mr.M.Hariharan,
Additional Government Pleader

O R D E R

Heard Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Additional Advocate General assisted by Mr.M.Hariharan, learned Additional Government Pleader for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner is before this Court for the second time questioning the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Earlier, the petitioner filed a writ petition in W.P.No.16343 of 2017, challenging the notice dated 15.11.2017. The Court was not convinced to entertain the writ petition and while dismissing it by order dated 29.06.2017, granted four weeks' time to the petitioner to file objections to the revision notice dated 15.11.2017. The petitioner failed to obey the order passed by this Court, but repeatedly was taking adjournment before the assessing officer and after waiting for several months, the assessing officer has completed the assessment by passing the impugned order. There is absolutely no error in the order passed by the assessing officer, because the petitioner has adopted dilatory tactics. The petitioner should be solely blamed for the present situation.

3. The learned counsel for the petitioner pleads that on account of financial difficulty, they were unable to approach the authorities and requests that one more opportunity can be granted.

4. The learned Additional Advocate General contended that enough indulgence has been granted to the assessee and if once again the matter is remanded to the respondent, it will be setting a bad precedent.

5. I fully agree with the stand taken by the learned Additional Advocate General. However, bearing in mind the interest of Revenue, this Court points out that assessment orders cannot be remain as paper orders. That apart, by completing the assessment ex-parte, if the petitioner files an appeal, then the appellate authority will consider the matter on merits and there is possibility that the matter will be remitted to the assessing officer for fresh consideration. Therefore, this Court is inclined to grant one more opportunity, which shall be the final opportunity to the petitioner, but however with a condition.

6. Accordingly, this writ petition is disposed of by directing the petitioner to pay 25% of the disputed tax within a period of four weeks' from the date of receipt of a copy of this order. If the same is paid, then the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit objections within a period of seven days' therefrom. On receipt of the objections, the respondent shall afford an

opportunity of personal hearing and redo the assessment. If the petitioner fails to comply with the condition within the time permitted, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed without further reference to this Court and the respondent is at liberty to recover tax and penalty. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

abr

To

1.The Commercial Tax Officer,
Group VII Enforcement (North),
Greams Road, Chennai-600 006.

2.The Joint Commissioner (CT),
Enforcement-I, Chennai.

3.The State Tax Officer,
Harur Assessment Circle, Harur.

+1 CC to Mr.M.Md.Ibrahim Ali, Advocate sr 30092.
+1 CC to Spl. Govt. Pleader(T) sr 30072.

W.P.No.9907 of 2018

SP(08/05/2018)