IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.6964 & 6965 of 2018 &
W.M.P. Nos.8614 & 8615 of 2018
and
WMPs.8416 & 8417/2018

V.Santhi ..Petitioner in both WPs

v.

The Assistant Commissioner (CT)
Kangeyam
Erode District ..Respondent in both WPs

W.P.No.6964/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN: 33083083726/2012-13 dated 31.08.2016 and quash the same as illegal and contrary to the scheme of the Act

W.P.No.6965/2018 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN: 33083083726/2013-14 dated 31.08.2016 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.M.Hariharan
Addl. Govt. Pleader (T)

COMMON ORDER

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader (T) for the respondent.

2. The petitioner has filed the above writ petitions challenging the orders passed by the respondent confirming the proposal to levy the penalty for the assessment years 2012-13 and 2013-14.

3. The petitioner had earlier come before this court and filed Writ Petitions in W.P.Nos. 16569 and 16570 of 2015 challenging the assessment orders dated 23.03.2015 for the year 2012-13 and 2013-14. The court allowed the writ petitions and remanded the matter back to the respondent for fresh consideration, as there was violation of principles of natural justice. With regard to the levy of penalty, the court observed that since the petitioner has filed their returns and subsequently on receipt of notices on 30.09.2014, paid the tax dues along with interest in both the cases on 14.10.2014, the question of payment of penalty does not arise. With these observations the respondent was directed to reconsider the issue with regard to waiver of of penalty.

4. The order passed by the court appears to be a positive direction. However, the respondent, by the impugned orders, confirmed the proposal to levy penalty. The Assessing Officer should have passed the orders considering the observations made by the court in the earlier writ petitions. However, in my considered view, since there are factual issues involved regarding verification of payment of tax and interest, etc., it is a fit case where the petitioner should file an appeal as against the impugned orders. Though it is stated that the petitioner has become defunct, since appeal remedy is available as against the order levying penalty, there is no condition for pre-depositing any amount. Thus, I am of the view that the petitioner should avail the appeal remedy available under the Act.

5. In the result, the writ petitions are disposed of by granting liberty to the petitioner to file appeals before the appellate authority against the impugned assessment orders, within a period of fifteen days from the date of receipt of a copy of this order and if such appeals are filed within the above stipulated time, the appellate authority shall entertain the appeals without rejecting the same on the ground of limitation. The petitioner is entitled to move stay applications before the Appellate Authority. Till such time, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Rj

To

The Assistant Commissioner (CT)
Kangeyam
Erode District.

+ 1 cc to Special Government Pleader SR.28539
+ 2 ccs to Mrs. R. Hemalatha, AdvocateSr.28186

W.P.Nos.6964 & 6965 of 2018 &
W.M.P. Nos.8614 & 8615 of 2018

CA(CO)
EU(08/05/2018)