In the High Court of Judicature at Madras

Dated : 03.1.2018

Coram :

The Honourable Mr.Justice T.S.Sivagnanam

Writ Petition No.34043 of 2017 &
WMP.Nos.37751 & 37752 of 2017

M/s.Sri Lakshmi Saw Mill, rep.
by its Partner Mr.N.Narashia
Patel ...Petitioner

Vs.

1.The Additional Deputy Commercial
Tax Officer, IAC, Room No.39,
III Floor, Commercial Tax Complex,
Near Indira Gandhi Statue,
Puducherry-605005.

2.The Appellate Assistant Commissioner
(CT), Commercial Tax Department,
Puducherry. ...Respondents

PETITION under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the impugned order vide No.34380008208/74/2016-17 dated 14.3.2017 passed by the first respondent, quash the same as highly illegal and direct the respondent to issue 'C' and 'F' form declaration by unlocking the on-line facility to the petitioner in TIN No.34380008208.

For Petitioner : Ms.L.Poompavai

For Respondents : Mr.J.Kumaran, GA

ORDER

Mr.J.Kumaran, the learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order dated 14.3.2017 passed by the first respondent withholding the issue of 'C' and 'F' declaration forms from the Departmental website. The reason for rejection is that the petitioner filed an appeal before the Appellate Authority

against the assessment order, that no stay has been granted pending appeal, that the petitioner is in arrears of tax and penalty and that therefore, the first respondent is withholding the issue of 'C' and 'F' declarations forms.

3. The basis, on which, the impugned order has been passed is completely flawed for the reason that the Appellate Authority only dismissed the stay petition and that the appeal is still pending. Therefore, by virtue of the dismissal of the stay petition by the Appellate Authority pending appeal, the first respondent cannot treat the petitioner to be in arrears and deny on- line generation of 'C' and 'F' declaration forms. Therefore, this Court is of the considered view that at best, by dismissal of the stay petition by the Appellate Authority, quantification of the tax and penalty cannot stand revived. If the interpretation given by the first respondent is to be accepted, the first respondent would be succeeding by the dismissal of the stay petition by the Appellate Authority and without obtaining any final order in the pending appeal, the first respondent would seek to recover tax and penalty. Such interpretation cannot be given to the order of dismissal of the stay petition pending appeal. Therefore, the impugned order has to be held to be not sustainable in law.

4. In the result, the writ petition is allowed, the impugned order dated 14.3.2017 is set aside and the petitioner shall be permitted to generate on-line Form 'C' and 'F' declarations. The first respondent is at liberty to proceed with the matter before the Appellate Authority, before whom, the appeal is pending. The above direction permitting the petitioner to generate on-line 'C' and 'F' declarations forms shall be complied with by the first respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

To

1.The Additional Deputy Commercial Tax Officer,
IAC, Room No.39, III Floor,
Commercial Tax Complex, Near Indira Gandhi Statue,
Puducherry-605005.

2.The Appellate Assistant Commissioner (CT),
Commercial Tax Department,
Puducherry.

+1cc to Mr.L.Poompavai, Advocate SR.No.316
+1cc to office of the Government Pleader Puducherry SR.No.470

WP.No.34043 of 2017 &
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of 2017

AK(CO)
GN(01/02/2018)