In the High Court of Judicature at Madras

Dated : 04.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11946 & 11947 of 2018

& WMP.Nos.13934 & 13935 of 2018

Mr.K.Jagannathan, Proprietor,
Sri Murugan Steel Furniture ...Petitioner

Vs

1.The Appellate Deputy Commissioner
(ST), Chennai South, III Floor,
PAPJM Building Annexe, No.1,
Greams Road, Chennai-6.

2.The Commercial Tax Officer (ST),
JJ Nagar Assessment Circle,
Thirumangalam, Chennai-40. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the 2nd respondent in proceedings pursuant to the assessment orders passed respectively in TIN: 33891424532/2014-15 and TIN: 33891424532/2015-16, both dated 20.6.2017 passed contrary to Section 19(1) of TNVAT Act read with Rule 10(2) of TNVAT Rules contrary to the law laid down by Hon'ble Madras High Court in the decision in the case of Jinsasan Distributors Vs. Commercial Tax Officer (CT) (2013) 59 VST 256 (Mad) and Sri Vinayaga Agencies Vs. Asst. Commissioner (CT) and another (2013) 60 VST 283 (Mad.) and consequential orders of the 1st respondent respectively in proceedings Nos.N.Dis 157/2018/A1 and N.Dis.156/2018/A1, both dated 02.4.2018 received on 09.4.2018, quash the same and direct the 2nd respondent to re-do the assessment for the fresh orders and further direct the second respondent to lift out the bank attachment.

For Petitioner : Mr.P.Govarthanan for
Mr.V.Dhanasekaran

For Respondents : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is before this Court challenging the assessment orders for the years 2014-15 and 2015-16.

3. As against the impugned assessment orders, the petitioner preferred appeals before the Appellate Authority after remitting 25% of the disputed tax in respect of each of the assessment years. However, the appeal petitions were returned as time barred, after which, the Assessing Officer issued recovery notices and also attached the petitioner's bank account. Therefore, the petitioner has rushed this Court by filing these writ petitions.

4. The learned counsel for the petitioner submits that the assessment orders are contrary to the decisions of this Court in the case of Jinsasan Distributors Vs. CTO (CT), Chintadripet Assessment Circle [reported in (2013) 59 VST 256] and Sri Vinayaga Agencies Vs. AC(CT) and another [reported in (2013) 60 VST 283 (Mad.)]

5. In my considered view, the submissions on the merits of the assessment cannot be made at this stage, since the petitioner failed to file their objections to the revision notices dated 31.3.2017. However, this Court is not inclined to non suit the petitioner and foreclose the rights of the petitioner, since they had shown their bona fides by remitting 25% of the tax demanded at the time of filing the appeals. Since the assessments were finalized ex parte for the reason that the petitioner did not file their objections to the revision notices, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a condition.

6. Accordingly, the writ petitions are disposed of with a direction to the petitioner to pay another 5% of the tax demanded for each of the assessment years within a period of three weeks from the date of receipt of a copy of this order. On such payment, the petitioner is entitled to treat the impugned orders show cause notices and file their objections within two weeks therefrom. On filing of such objections, the second respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. On the petitioner complying with the condition of payment of another 5% of the tax demanded for each of the assessment years, the second respondent shall not demand the balance of tax amount

and the entire penalty as quantified in the impugned assessment orders, since this Court has directed the impugned proceedings to be treated as a show cause notices and the attachment of the petitioner's bank account shall be lifted forthwith. It is made clear that this order will not enure to the benefit of the petitioner if the petitioner fails to make payment of another 5% of the tax demanded within the time stipulated. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1.The Appellate Deputy Commissioner (ST), Chennai South, III Floor,
PAPJM Building Annexe, No.1, Greams Road, Chennai-6.

2.The Commercial Tax Officer (ST), JJ Nagar Assessment Circle,
Thirumangalam, Chennai-40.

+1cc to Mr.V.Dhanasekaran, Advocate sr.no.34730
+1cc to Government Pleader in sr.no.34771

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nr 12/06/2018