IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.24668 & 24669 of 2018
and
WMP Nos.28708 & 28709 of 2018

Sri Durgai Amman HP GAS GRAMIN Vitrak, Vellore
Having office at No.2979,
Pachaiyamman Koil Street,
Thakkolam, Arakkonam-631 151.
Represented by its Proprietor
Mr.J.Senthilkumar

..Petitioner
(in WP.Nos.24668 & 24669 of 2018)

Vs.

The Assistant Commissioner (ST) (FAC)
Office of the Commercial Tax Office
Arakkonam.

..Respondent
(in WP.Nos. 24668 & 24669 of 2018)

Writ petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the proceedings in TIN No.33384303530/2015-2016 dated 31.03.2017 and TIN No.33384303530/2014-2015 dated 27.01.2017 respectively, passed by the respondent and quash the same insofar the levy of penalty is concerned.

For Petitioner : Mr.K.M.Anand
(in WP.Nos. 24668 & 24669 of 2018)
For Respondent : Mr.M.Hariharan
Additional Government Pleader
(in WP.Nos. 24668 & 24669 of 2018)

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner in both these writ petitions is aggrieved against the orders of assessment passed in respect of the assessment years 2014-2015 and 2015-2016 dated 27.01.2017 and 31.03.2017 respectively.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

4. The Assessing Officer, after issuing notices of proposal, passed the orders of assessment impugned in these writ petitions, by imposing tax and penalty. The Assessing Officer has found that the petitioner had neither filed monthly return nor annual return for both assessment years. It is also noted by the Assessing Officer that the petitioner having received notices of proposal, has not chosen to file their reply. Therefore, the Assessing Officer having left with no other option, concluded the assessment as stated supra. Though it is contended before this Court that there was no proper notices served on the petitioner, except making such vague averment, the petitioner has not substantiated such allegation, by placing any material facts. On the other hand, the Assessing Officer has categorically found that the notices of proposal were served on the petitioner on 22.11.2016 and 28.02.2017 respectively. Apart from the said fact, it is also seen that the Assessing Officer has given a factual finding that the petitioner has not filed either their monthly return or annual return for the respective assessment year. When such being the factual findings rendered by the Assessing Officer, in the absence of any other contra materials placed before this Court disputing such factual aspects, this Court is of the view that it is for the petitioner to approach the next fact finding authority, by filing a regular appeal, so that all the factual contentions raised by the petitioner, challenging the impugned assessment orders can be considered by the said fact finding authority viz., the First Appellate Authority.

5. Therefore, without expressing any view on the merits of the matter, both these writ petitions are disposed of, by granting liberty to the petitioner to file such statutory appeals within a period of three weeks from the date of receipt of a copy of this order, by complying with other statutory requirements for filing those appeals. If such appeals are filed within the time stipulated herein, the concerned Appellate Authority shall consider the appeals on its own merits and pass appropriate orders in accordance with law, without reference to the period of limitation. It is also made clear that this Court is not expressing any view on the merits of the assessment, as it is for the petitioner to canvass the correctness or otherwise of the same before the Appellate Authority, who in turn will

consider such contentions on merits and in accordance with law. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST) (FAC)
Office of the Commercial Tax Office
Arakkonam.

+2cc to Mr.K.M.Anand, Advocate, S.R.No.64776 & 64777

+1cc to the Government Pleader, S.R.No.65164

W.P.Nos.24668 & 24669 of 2018

GSP(20/09/2018)