IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13557 to 13560 of 2018
&
W.M.P.Nos.15974 to 15977 of 2018

Tvl.Subbulakshmi Hardwares
Rep. by its Proprietor Mr.P.Durairaj
No.272/A, T.H.Road
Thiruvottiyur
Chennai- 600 019 ... Petitioner

Vs.

The Assistant Commissioner (CT)
Thiruvottiyur Assessment Circle
Thiruvottiyur
Chennai- 600 019 ...Respondent

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN/33141100916/2012-2013 dated 05.04.2017 and quash the same being illegal, invalid without jurisdiction and violated the principles of natural justice and contrary to law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.M.Hariharan
Additional Govt. Pleader

_C O M M O N O R D E R_

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent.

2.The petitioner, who is a registered on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the Assessment Orders under the Tamil Nadu Value Added Tax Act for the Assessment years 2012-13, 2013-14, 2014-15 and 2015-16

3.The learned counsel for the petitioner would submit that there is a violation of principles of natural justice and no adequate opportunity was granted to the petitioner and details regarding the allegations of mismatch were not furnished.

4.On a reading of the impugned order, it is evidently clear that it is the petitioner, who has committed the default and not filed their objections though two revision notices dated 27.01.2017 and 03.03.2017 were received by the petitioner. Therefore, the petitioner cannot state that there is a violation of principles of natural justice as it is a case where the petitioner failed to avail the opportunity afforded to them.

5. The learned counsel for the petitioner submits that one more chance may be given to the dealer to go before the Assessing Officer and assures the Court that the dealer will cooperate in the assessment proceedings and will not drag on the matter and produce all the records to the satisfaction of the Assessing Officer.

6. The learned Additional Government Pleader appearing for the respondent would submit that the writ petitions are not maintainable as there is an appellate remedy available under the Act. It may be true that appellate remedy is available under the Act. However, if the appeals were filed on the date when these writ petitions were filed, the same would have been dismissed as not maintainable because of expiry of period of limitation.

7. It would not have been very difficult for this Court to dismiss the writ petitions, but, however the Court bears in mind the interest of revenue, which requires to be balanced in such cases. This is more so in the instant case, as, for more than one year, the impugned orders are remained only as a paper order and effective recovery proceedings were unable to be initiated, though steps have been taken to invoke the provisions of the Revenue Recovery Act. For this reason, this court

is inclined to protect the interest of the revenue as well as give one more opportunity to the petitioner to go before the Assessing Officer, subject to certain conditions.

8. Accordingly, these writ petitions are allowed by directing the petitioner to pay 15% of the disputed tax for each Assessment Year within three weeks from the date of receipt of a copy of this order. If this condition is complied with within the time permitted, the petitioner is entitled to treat the impugned order as show-cause notice and submit their objections within a period of two weeks thereafter. In the meantime, if the petitioner wants any record, it is well open to the petitioner to approach the Assessing Officer in person and give a written request and those details, if relevant to the case, may be furnished to the petitioner. After the objection is filed in full form, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Till the above exercise is completed, the demand of the balance of the tax penalty shall remain stayed. In the event of petitioner fails to comply with the above condition, the benefit of this order will not enure to the petitioner and the writ petitions would stand automatically dismissed without further reference to this Court.

The writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

11.06.2018

gpa

To

The Assistant Commissioner (CT)
Thiruvottiyur Assessment Circle
Thiruvottiyur
Chennai- 600 019

T.S.SIVAGNANAM.J.,

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