IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.7.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.16967 OF 2018 &
WMP.NOS.20208 & 20209 OF 2018

Tvl.A.Mohammed Sowban,
Proprietor of Hamdaan Shoes ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Office of the Assistant Commissioner
(CT), Ambur. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent dated 21.12.2016 in TIN No.33154264129/2015-16 and the consequential recovery notice dated 22.6.2018 in TIN No.33154264129/2015-16 Na.Ka.A3/2524/2017 and quash the same.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has impugned the order of assessment passed by the respondent dated 21.12.2016 for the year 2015-16 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the consequential recovery notice dated 22.6.2018.

3. Earlier, the petitioner approached this Court by filing W.P.No.8045 of 2017 challenging the very same assessment order dated 21.12.2016. This Court disposed of the said writ petition on 05.4.2017 directing the petitioner to file an application under Section 84 of the said Act and also directing the respondent to consider the same within a period of four weeks. However, in spite of lapse of more than six months, nothing turned out except for issuance of a recovery notice dated 21.12.2017.

4. This was followed by another notice dated 19.3.2018, in which, though there is a reference to the order passed in the said writ petition dated 05.4.2017, the body of the notice appears to be not containing any of the directions given by this Court. On receipt of the said notice dated 19.3.2018, the petitioner sent a reply dated 23.4.2018 pointing out the directions issued by this Court in the said writ petition as well as the legal position. The said representation was received in the office of the respondent on 25.4.2018, as could be seen from the acknowledgment card. However, without considering the same and without complying with the directions issued by this Court in the said writ petition, the respondent issued the demand notice dated 22.6.2018.

5. The above facts clearly show that the impugned demand cannot survive in the light of the fact that the respondent failed to adhere to the directions issued by this Court in the earlier writ petition.

6. The learned Additional Government Pleader, on instructions, would submit that there could have been a miscommunication, which has resulted in the impugned demand notice dated 22.6.2018.

7. Considering the facts of the case and also the fact that the respondent did not comply with the order in the earlier writ petition, this Court is inclined to interfere with the impugned recovery notice dated 22.6.2018.

8. Accordingly, the writ petition is allowed, the impugned recovery notice dated 22.6.2018 is set aside and the matter is remanded to the respondent for a fresh consideration. The respondent shall fix a date for personal hearing, during which, the petitioner shall submit their defenses in writing and produce necessary documents in support of their stand. After affording effective opportunity of personal hearing, the respondent shall redo the assessment in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

The Deputy Commercial Tax Officer, Office of the Assistant Commissioner (CT), Ambur.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.43787
+1cc to the Special Government Pleader(T), S.R.No.44174

WP.No16967 of 2018 & WMP. Nos.20208 & 20209 of 2018

BR(CO)
CS/20/07/18