In the High Court of Judicature at Madras

Dated : 29.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1699 of 2018 & WMP.Nos.2103 & 2104 of 2018

M/s.Tech Sharp Engineers Pvt.
Ltd., rep.by its Managing Director
D.Mathew ...Petitioner

Vs

The Assistant Commissioner (CT),
(Main), Aminjikarai Assessment
Circle, Kuralagam Annexe Building,
III Floor, Chennai-108. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in CST/719456/2009-10 dated 20.6.2014 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha

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. This writ petition has been filed challenging the assessment order, which was passed on 20.6.2014 for the year 2009-10 under the provisions of the Central Sales Tax Act, 1956.

3. The delay in challenging the order would be a sufficient ground to dismiss the writ petition in limine.

4. The learned counsel for the petitioner pleads that on account of severe financial difficulties and labour problem, the industry had to be closed down and that the Managing Director has been arrested and confined to jail. It is further submitted that Form B certificate of registration issued to the petitioner clearly shows that the products, which they are entitled to handle and ancillary products are also covered and that on account of the unsurmountable difficulties faced by the Managing

Director, they could not file their objections to the revision notice dated 11.4.2014 in time, though they sought extension of time upto 15.5.2014, by letter dated 05.5.2014. Hence, the learned counsel for the petitioner pleads one more opportunity may be granted to establish that the proposal for revision of assessment is not sustainable. The learned counsel also submits that in the absence of mens rea, invocation of penal provisions is improper. In this regard, the learned counsel has referred to the decision of the Hon'ble Full Bench of this Court in the case of State of Tamil Nadu Vs. Nu-tread Tyres {reported in (2006) 148 STC 256].

5. Considering the above facts, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a condition.

6. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax within three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, the connected WMPs are closed.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT), (Main), Aminjikarai Assessment Circle, Kuralagam Annexe Building, III Floor, Chennai-108.

+1 CC to Mrs.R.Hemalatha, advocate sr 6461.
+1 CC to Spl. Govt. Pleader(t) sr 7161.

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SP(15/02/2018)