IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.1778 to 1780 of 2018
and
W.M.P.Nos.2201 to 2206 of 2018

M/s.Sri Krishna Engineers,
Rep.by its Sole Proprietor R.Kumar,
No.5, Sidco Industrial Estate,
Semmandalam,
Cuddalore - 607 001. ..Petitioner in all W.Ps

Vs.

The Deputy Commercial Tax Officer,
Cuddalore Taluk Assessment Circle,
Cuddalore. ..Respondent in all W.Ps

Common Prayer :

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in proceedings No.TIN:33284404077/2013-14, TIN:33284404077/2014-15, TIN:33284404077/2015-16 dated 26.09.2016 passed by the respondent including the demand notice issued on the same date in Form-O and also the notice for payment of interest issued under rule 16(5) and 16(A) on the same date for the Assessment Year 2013-14, 2014-15, 2015-16 and quash the same and further direct the respondent to pass orders after giving opportunity to the petitioner.

For Petitioner : Mr.M.Gnanadesikan
Senior Counsel
for M/s.Gnanadesikan Law Associates

For Respondent : Mr.M.Hariharan
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.M.Gnanadesikan, learned senior counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader, appearing on behalf of the respondent.

2.Considering the limited scope of the writ petition and in the light of the statutory provisions as contained under Section 22(6)(a) of the Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "the TNVAT Act"], the writ petitions themselves are taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the respondent under the provisions of "the TNVAT Act" and running a small scale industry under the name and style of Krishna Engineering. The petitioner is aggrieved by the impugned assessment orders for the years 2013-14, 2014-15, 2015-16 dated 26.09.2016.

4.The petitioner's case is that no pre-revision notice was served on the petitioner. Though in the impugned assessment orders, there is a reference to the notice dated 06.09.2016. Further, the impugned assessments are based on the details culled out from the department website, alleging purchase suppression.

5.The learned Senior Standing Counsel for the petitioner, while admitting that it is a mistake of the petitioner in not filing the return at the appropriate time and paying tax, would submit that on account of certain defaults committed by the employees/authorized representative of the petitioner, they have been put to the present predicament and all that they plead is one opportunity to go before the Assessing Officer.

6.The learned counsel referred to Section 22(6)(a) of the TNVAT Act and submitted that the said provision provides for an opportunity to the dealer to approach the Assessing Officer and satisfy him that there were genuine reasons for not filing returns and the same was beyond their control and then, in such event, the Assessing Officer can cancel the assessment made and make the fresh assessment on the basis of the return submitted. The impugned assessments are all based on judgments assessments under Section 22(4) of the TNVAT Act and it would be well open to the petitioner/dealer to approach the Assessing Officer to make a fresh assessment in terms of Section 22(6)(a) of the TNVAT Act. However, there is a proviso under Sub Section 22(6)(1), which states that no such application shall be entertained under the said Sub Section unless it is accompanied by satisfactory proof on the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become possible, as the case may be.

7.As noticed above, the petitioner has not filed the returns. Therefore, if they seek to approach the Assessing Officer requesting for a fresh assessment, then they have to file their return along with admitted tax and then explain to the Assessing Officer as to why they did not file the returns in time and what are the reasons, which are beyond their control.

8.Thus, considering the facts and circumstances of the case and the statutory provisions and also noting that though the impugned assessment orders were passed on 26.09.2016, they have continued to remain as paper orders and the Department has not been able to recover any of the tax and penalty as quantified in the impugned assessment orders. Therefore, this Court is of the view that an opportunity to be granted to the petitioner to go before the Assessing Officer, but however, such liberty goes with a condition.

9.Accordingly, the writ petitions are disposed of by directing the petitioner to pay 15% of the disputed tax along with their return for all the three assessment years clearly disclosing their turnover and if the payment is made as directed by the Court and the returns are filed, the Assessing Officer after affording an opportunity of personal hearing, shall re-do the assessment on merits and in accordance with law. The payment along with the returns shall be effected within a period of three weeks. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
The Deputy Commercial Tax Officer,
Cuddalore Taluk Assessment Circle,
Cuddalore.

+3ccs to M/s.Gnanadesikan Law Associates, Advocate,
S.R.No.7654 & 7655

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kj(co)
cs/05/03/18