In the High Court of Judicature at Madras

Dated : 30.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.1860 & 1861 of 2018
& WMP.Nos.2307 to 2310 of 2018

M/s.Thavamani Traders, rep. by its Proprietor M.Thavamani ...Petitioner in WP.No.1860/2018

M/s.Suvarna Fibro Tech Pvt. Ltd., rep.by its Vice President B.Ramesh ...Petitioner in WP.No.1861/2018

Vs

The Commercial Tax Officer, Vellore (Rural) Circle, Vellore, Vellore District. ...Respondent in WP.No.1860/2018

The Assistant Commissioner (ST), Ranipet (SIPCOT) Assessment Circle, Ranipet, Vellore District. ...Respondent in WP.No.1861/2018

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari (i) to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33664323261/ 2007-08 dated 30.8.2016 and quash the same as illegal and contrary to the scheme of the Act; and (ii) to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33171084167/ 2016-17 dated 30.10.2017 respectively and quash the same as illegal and contrary to the scheme of the Act.

For Petitioners : Mrs.R.Hemalatha
For Respondents : Ms.G.Dhana Madhri, GA

COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioners are aggrieved by the impugned assessment orders respectively dated 30.8.2016 and 30.10.2017 stating that the revision of assessment was not sustainable and more particularly, in the light of the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites Pvt. Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642] wherein it has been held that the Assessing Officer should not be solely guided by the report of the inspecting officials.

3. It is further submitted that without there being a specific finding regarding mens rea, no penalty should have been levied under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006.

4. Though the petitioners have raised all these contentions in these writ petitions, they failed to file their objections to the revision notices issued to them respectively dated 18.7.2016 as well as 28.4.2017 and 27.9.2017. Thus, the petitioners, having failed to respond to the revision notices, cannot now approach this Court and complain that there has been a violation of the principles of natural justice. The case on hand is one where the petitioners failed to utilize the opportunity granted to them nor filed their objections. This would be a sufficient ground to dismiss the writ petitions. However, considering the fact that though the respective Assessing Officer passed the orders on 30.8.2016 and 30.10.2017, the assessment still continues to remain in paper and no recovery can be made, *this Court is inclined to grant one more opportunity to the petitioners to go before the respective Assessing Officer to submit their objections, however, subject to a condition.

5. Accordingly, the writ petitions are disposed of with a direction to the respective petitioner to pay 15% of the disputed tax within three weeks from the date of receipt of a copy of this order. If the petitioners comply with the said condition, they will be entitled to treat the impugned orders as show cause notices and submit their objections within a period of seven days therefrom. On receipt of the objections, the respective respondent shall afford an opportunity of personal hearing to the petitioners and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioners, if the petitioners fail 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.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

rs

To

1.The Commercial Tax Officer,
Vellore (Rural) Circle, Vellore,
Vellore District.

2.The Assistant Commissioner (ST),
Ranipet (SIPCOT) Assessment Circle,
Ranipet, Vellore District.

+2cc to Mr.R.Hemalatha, Advocate SR.No.7545
+1cc to Special Government Pleader SR.No.7029

WP.Nos.1860 & 1861 of 2018 &
WMP.Nos.2307 to 2310 of 2018

GN(14/02/2018)