IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2018

CORAM

The Hon'ble Mr.JUSTICE S.VAIDYANATHAN
and
The Hon'ble Mr.JUSTICE KRISHNAN RAMASAMY

W.A.No.2340 of 2018

Tvl.Sri Kumaran Hardwares,
rep. by its Prop D.Sundar Rajan,
No.38, Medavakkam Main Road,
Chennai-600 117. .. Appellant

-vs-

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Commercial Taxes,
Fort St. George,
Beach Road, Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam,
Chepauk, Chennai – 600 005.

3.The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
26-D, 6th Cross Street,
4th Main Road, Medavakkam,
Chennai – 600 100. .. Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.07.2018 made in W.P.No.30853 of 2017 on the file of this Court. WP 30853/2017 Prayer in Petition filed under Article 226 of the Constitution of India Praying for issuance of a writ of certioraified mandamus to call for the records relating to the order passed by the 3rd Respondent in his proceedings in TIN.33330981356/2010-11 dt.10.11.2017 received by the Petitioner on 10.11.2017 and quash the same and to direct the 3rd respondent to furnish the copies of the documents as requested by the Petitioner his representation dt.10.10.2017 and 14.10.2017

For Appellant : Mr.M.Md.Ibrahim

For Respondents : Ms.G.Dhana Madhri
Government Advocate

JUDGMENT

(Order of the Court was made by S.Vaidyanathan, J.)

Ms.G.Dhana Madhri, learned counsel accepts notice on behalf of the respondents.

2. This appeal has been preferred by the appellant against the order of the learned Single Judge dated 18.7.2018 passed in W.P.No.30853 of 2017.

3. The appellant has preferred this present appeal contending that proper opportunity was not given to them and that they are willing to pay 15% of the amount determined over and above 10% which has already been paid.

4. A glance of the order of the learned Single Judge, more particularly, paragraph 5 would make it clear that earlier the appellant has challenged the order passed by the 3rd respondent in W.P.No.21507 of 2015 for the assessment year 2010-2014. By an order dated 18.08.2015, the said writ petition was disposed of and the matter has been remitted to the original authority for consideration afresh.

5. Thereafter, the appellant has been periodically litigating the issue. By the impugned order, the learned Single Judge, after taking note of the conduct of the appellant and right of appeal, granted 30 days time to prefer an appeal and dismissed the writ petition. In its order, the learned Single Judge also stated that since the appellate authority was not a party, the Registry was directed to communicate a copy of the order to the appellate authority.

6. We find that there is no error in the order of the learned Single Judge impugned in this appeal and from the reading of the order, it appears that the appellant is a Court bird and eventually trying to dilly-dally the proceedings without the authorities arriving at a decision. We are not inclined to accept the contention of the appellant that they may be permitted to deposit 15% of the amount over and above 10% which has already been paid and they may be permitted to agitate their grievance before the original authority. Since the order of the original authority has become final and not satisfied with the contention, a final chance is given to the appellant to approach the appellate authority viz., the Appellate Deputy Commissioner Commercial Cases (East), Chennai, within a period of 15 days from the date of receipt of a copy of

this judgment. It is made clear that in the event of non-deposit of 15% of the amount over and above 10% which has already been paid on the amount determined by the original authority, the appeal can be rejected at the threshold. Once 15% of the amount as stated supra paid, the bank attachment can be lifted.

7. The writ appeal is disposed of in terms aforesaid. No costs. Consequently, C.M.P.No.18567 of 2018 is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

bbr/mp

To

1.The Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Beach Road, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezilagam,
Chepauk, Chennai - 600 005.

3.The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
26-D, 6th Cross Street,
4th Main Road, Medavakkam,
Chennai - 600 100.

4. Appellant Deputy Commissioner
Commercial Cases (East) Chennai

+1cc to Mr.M.MD.Ibrahim Ali, Advocate SR.No.71533



W.A.No.2340 of 2018

SPD(CO)

GMY(29/10/2018)