In the High Court of Judicature at Madras

Dated : 24.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal Nos.158 & 159 of 2019
and CMP.Nos.1523 & 1529 of 2019

S.Rajendran, Works Contractor ...Appellant in both the Was

Vs

The Assistant Commissioner (CT),
Villupuram-I, Villupuram,
Villupuram District. ...Respondent in both the Was

APPEALS under Clause 15 of the Letters Patent against the common order dated 16.11.2018 made in WP.Nos.30100 and 30102 of 2018.

Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the Respondent in its impugned proceedings made in TIN No.33234681767/2008-09 and 2011-2012 dated 14.10.2016 quash the same as illegal and contrary to the scheme of the Act.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.Mohammed Shaffiq, SGP

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals are filed by the dealer registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the Act) challenging the common order dated 16.11.2018 passed in W.P.Nos.30100 and 30102 of 2018.

2. The appellant - assessee filed the said writ petitions before the learned Single Judge challenging the said assessment orders under the provisions of the Act for the years 2008-09 and 2011-12. The challenge to the said assessment orders was on the ground that a reasonable opportunity was not granted to the assessee and that the Assessing Officer erred in making a best judgment assessment solely based upon the details culled out from the official website of the Department.

3. Before the learned Single Judge, the appellant relied upon the decision rendered by one of us (TSSJ), in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343]. However, the learned Single Judge, who heard the present writ petitions, was not convinced to entertain the same on the ground that the assessee approached this Court after a period of two years from the date of the assessment orders and that the assessee had not availed the appeal remedy. Accordingly, the learned Single Judge was not inclined to interfere with the assessment orders solely on the ground of delay and laches. This is how the appellant is before us by way of these appeals.

4. We have heard Mrs.R.Hemalatha, learned counsel for the appellant and Mr.Mohammed Shaffiq, learned Special Government Pleader accepting notice for the respondent.

5. It may be true that the appellant approached this Court under Article 226 of The Constitution of India challenging the assessment orders dated 14.10.2016 nearly after two years. However, it is seen that though the assessment orders were passed in October 2016, they continue to remain as paper orders and that the Department could not effect any recovery of tax and penalty as quantified by the Assessing Officer. Furthermore, we find that the revision of assessment done by the Assessing Officer was based upon the details, which were culled out from the official website of the Department and based upon on allegation that there is a discrepancy in the transactions between Annexure I of the appellant and Annexure II of the other end dealer. We also find from the assessment orders that the details pertaining to the other end dealer have been furnished namely tax payer identification number, invoice number, commodity code, etc. Therefore, the assessee could have very well submitted their objections to the revision notices and reconciled the transactions before the Assessing Officer. However, the assessee failed to do so and did not respond to the revision notices. Hence, the Assessing Officer is well justified in completing the assessments on best of judgment basis.

6. However, considering the fact that the assessment orders remained as paper orders since October 2016 and the fact that the assessee being an individual road contractor with the Public Works Department, we deem it appropriate to grant one opportunity to the assessee to go before the Assessing Officer, however, subject to a condition.

7. Accordingly, the writ appeals are allowed, the orders dated 16.11.2018 passed in the writ petitions are set aside and the writ petitions are disposed of with a direction to the appellant to pay 25% of the tax demanded for each of the assessment years within a period of four weeks from the date of receipt of a copy of this judgment. If the appellant complies with the above condition, they are at liberty to treat the assessment orders dated 14.10.2016 as show case notices and submit their objections within ten days from the date, on which, the payment is effected. Thereafter, the Assessing Officer shall afford an opportunity of personal hearing to the assessee, hear him and pass appropriate orders on merits and in accordance with law. If the assessee fails to comply with the above condition, the benefit of this order will not enure to the assessee and the respondent will be at liberty to proceed further in accordance with law for recovery of tax and penalty as determined in the assessment orders dated 14.10.2016. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT), Villupuram-I, Villupuram, Villupuram District.

+1cc to the Special Government Pleader Sr.6237
+2cc to Mrs.R.Hemalatha, Advocate Sr.5746

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srg 26/02/2019