IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.3255 and 3307 of 2019
& WMP Nos.3517 and 3519 of 2019

A.S.Enterprises
Represented by its Proprietor
.... Petitioner in both W.Ps

-vs-

The Commercial Tax Officer (Addl.)
Gudiyatham (West) 635 803
.... Respondent in both W.Ps

PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the respondent in order dated 15.07.2017 in TIN:33374343645 2013-14 and 2015-16 respectively and quash the same.

For Petitioner in the above W.Ps : Mr.Adithya Reddy

For Respondent in the above W.Ps : Mr.Mohammed Shaffiq
Standing Counsel

C O M M O N O R D E R

Mr.Mohammed Shaffiq, learned Standing Counsel takes notice for the respondent. At request and by consent of both parties, the Writ Petitions themselves are taken up for final disposal.

2. Both the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent submit that this Court has considered a similar issue in W.P.Nos.16649 and 16650 of 2018 dated 05.07.2018 (Tvl. Firza Leather & Uppers V. The Commercial Tax Officer), a copy of which has been circulated today and that similar order may be passed in this Writ Petition as well.

3. This Court in the aforesaid Writ Petitions held as follows:

' ......

2. The petitioner is aggrieved by the assessment orders dated 15.12.2016 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2013-2014 and 2014-2015. The petitioner would state that the pre-assessment notice dated 14.11.2016 and the assessment orders were not served on the petitioner and only the recovery notice was served on them and that is how they came to know that an assessment order has been passed. From the letter written by the respondent to the petitioner dated 05.06.2018, It is seen that the pre-assessment notice which was sent by registered post was returned undelivered. Similarly, the assessment order also returned undelivered.

3. Further, on enquiry, it was found that the petitioner was no longer carrying on business in the said place and had vacated at about 1 = years back. Thus, the respondent cannot be faulted for having completed the assessment on the best judgment basis.

4. However, considering the fact that the impugned assessment orders though passed in December 2016, till date, has remained a paper order and no recovery has been effected. Therefore, balancing the interest of the Revenue as well as that of the dealer, this Court is inclined to grant one more opportunity to the petitioner.

5. Accordingly, the writ petitions are disposed of by directing the petitioner to pay 15% of the disputed tax and if the same is paid within a period of 15 days from the date of receipt of copy of this order, the petitioner is entitled to treat the impugned order as a show cause notice and submit their objections within a period of 15 days thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.'

4. Following the same, the orders of assessment are set aside upon condition that the petitioner remit 15% of the disputed tax within a period of 15 days from today. The petitioner will submit its objections to notices dated 15.07.2017 within a period of 15 days from the date of remitting the disputed tax. Upon receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law within a period of two (2) months from the date of conclusion of the personal hearing.

5. The Writ Petitions are allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (Addl.)
Gudiyatham (West) 635 803.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.9896
+1cc to the Government Pleader(Taxes), S.R.No.10333

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& WMP Nos.3517 and 3519 of 2019

RK(CO)

rrs 21/02/2019