IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.40477 of 2005
and WP.MP.No.43434 of 2005

M/s.Kasu Electricals (P) Ltd.,
Rep. by its Managing Director,
R.Kannan ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai 600 005.

2. The Deputy Commercial Tax Officer,
Singanallur Circle,
Coimbatore. ...Respondents

Prayer: Writ petition 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 2nd respondent in his proceedings herein TNGST No.1821980 / 03-04, dated 14.11.2005 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mrs.Dhanamadhri, G.A.

O R D E R

This petition has been filed to quash the proceedings of the second respondent in TNGST No.1821980 / 03-04, dated 14.11.2005.

2. In the assessment order, the second respondent has placed reliance on the clarification of Commissioner of Commercial Taxes in clarification No.162/2004. The petitioner's objection that the clarification order which itself is a subject matter of Writ Petition in W.P.No.23066 of 2004, was rejected through the impugned order dated 14.11.2005, stating that the Writ Petition was dismissed on 18.10.2005 itself.

3. It is now brought to the notice of this Court that the observation of the Assessment Officer with regard to the disposal of the said Writ Petition is erroneous, since the Writ Petition in W.P.No.23066 of 2004 came to be dismissed only on 06.09.2016. In view of the interim order of stay, which was in operation till the disposal of the said Writ Petition, the observation made by the Assessing Officer that the Writ Petition was dismissed, is apparently erroneous and therefore, the consequent assessment cannot be sustained on the date when the assessment order came to be passed.

4. Nevertheless, as stated earlier, subsequent to the order of this Court dated 06.09.2016, the Writ Petition in W.P.No.23066 of 2004 came to be dismissed, by which, the clarification No.162 of 2004 was upheld. Consequently, it can be held that the assessment made on 14.11.2005 based on the aforesaid clarification, can be sustained, but it would have technical flaw in it. In this background, if the petitioner is granted liberty to file an appeal against the impugned order of assessment, without reference to the limitation, the ends of justice would be secured.

5. In the light of the above observations, the petitioner is granted liberty to file an appeal against the impugned assessment oder dated 14.11.2005, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such an appeal, the concerned appellate authority shall consider the same on its own merits and pass appropriate orders in accordance with law, as expeditiously as possible, in any event within a period of three months therefrom.

6. With the above observation and directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Commissioner of Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai 600 005.

2. The Deputy Commercial Tax Officer,
   Singanallur Circle,
   Coimbatore.

+1cc to the Special Government Pleader Sr.56129
+1cc to Mr.R.Hemalatha, Advocate Sr.56071

W.P.No.40477 of 2005

jp[co]
srg 22/08/2019