In the High Court of Judicature at Madras

Dated : 06.3.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.696 & 703 of 2019 &
CMP.Nos.5717, 5719 & 5785 of 2019

M/s.India Traders, rep.by
its Proprietor K.Balaji
...Appellant/Petitioner in both Appeals
Vs
The Assistant Commissioner (CT),
Vellore (South) Circle, Vellore,
Vellore District.
...Respondent/Respondent in both Appeals

Prayer : APPEALS under Clause 15 of the Letters Patent against the common order dated 21.12.2018 passed in W.P.Nos.34168 and 34172 of 2018.

W.P.Nos.34168 and 34172 of 2018: Writ Petitions filed under Article 226 of the constitution of India, praying to issue a writ of certiorari to call for the records on the file of the Respondent his impugned proceedings made in TIN.33524223525/2012-2013 dated 31/08/2015 and TIN 33524223525/2014-2015 dated 19/10/2015 and to quash the same as illegal and contrary to the scheme of the Act.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.V.Haribabu, GA
Additional Government Pleader (Taxes)

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

We have heard Mrs.R.Hemalatha, learned counsel for the appellant and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent. With consent, the writ appeals are taken up for joint disposal.

2. These appeals are directed against the common order dated 21.12.2018 passed in W.P.Nos.34168 and 34172 of 2018.

3. The said writ petitions were filed by the appellant, which is registered as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act), challenging the assessment orders dated 31.8.2015 and 28.8.2015 passed under the Act respectively for the years 2012-13 and 2014-15. The said writ petitions were dismissed by the learned Single Judge by the common impugned order on the ground that the appellant did not avail the alternate remedy, that challenge to the assessment orders was grossly delayed and that therefore, the writ petitions could not be entertained. The learned Single Judge further noted that only after issuing the revision notices, action was initiated, that the appellant did not file objections to the revision notices and that therefore, the proposals made in the revision notices dated 06.8.2015 were confirmed.

4. The case of the appellant is that the revision of assessment took place only on account of an inspection conducted by the officials of the Enforcement Wing and that there is no independent application of mind by the Assessing Officer.

5. However, these issues should have been pointed out at the very first instance when the appellant received the said revision notices. Therefore, the learned Single Judge cannot be faulted for having not entertained the said writ petitions. However, bearing in mind the interest of the Revenue, we propose to grant some indulgence to the appellant since the assessment orders remain as paper orders though they were passed in the year 2015 and till date, no recovery could be effected from the assessee. Furthermore, we find that the tax liability as per the impugned revised assessment orders for both the years is less than Rs.4 lakhs. Thus, considering the plight of the appellant, which appears to be a small dealer, this Court is inclined to dispose of these appeals with certain directions.

6. Accordingly, the writ appeals are disposed of and the common order dated 21.12.2018 passed in the said writ petitions is modified with a direction to the appellant to pay 15% of the tax demanded for each of the assessment years within a period of six weeks from the date of receipt of a copy of this order. If the said condition is complied with for both the assessment years, the appellant is entitled to treat the assessment orders as show cause notices and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the appellant and redo the assessments in accordance with law. It is made clear that if the appellant fails to comply with the condition imposed in this judgment for any of the assessment

years, the benefit of this judgment will not enure to the appellant and the writ appeals will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the appellant complies with the said condition for each of the assessment years, the demand of the balance tax and entire penalty for the assessment years 2012-13 and 2014-15 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT), Vellore (South) Circle,
Vellore, Vellore District.

+2ccs to M/s.R.Hemalatha, Advocate SR.No.21152

+1cc to Government Pleader(Taxes) SR.No.21687,21686

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GMY(04/04/2019)