IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4400 of 2013
and
M.P.No.2 of 2013

M/s.Rani Chemicals
rep. by its Proprietor
Mr.K.Muthusamy,
No.48/1, Attayampalayam,
Gangapuram Post,
Chithode, Erode. ...Petitioner

.Vs.

1.The Appellate Deputy Commissioner (CT),
No.38, Poongundranar Street,
Karungalpalayam, Erode.

2.The Commercial Tax Officer,
Chithode Assessment Circle,
Erode. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the file of the first respondent in his proceeding in AP.11/2012 (TNGST) dated 28.08.2012 and to quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondents: Mrs.Dhanamadhri, GA

O R D E R

The Assessment Order of the second respondent herein passed under Section 12(2) of the TNGST Act, as confirmed by the first respondent in his proceeding in AP.11/2012 (TNGST) dated 28.08.2012, is under challenge in the present Writ Petition.

2. Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mrs.Dhanamadhri, learned Government Advocate appearing on behalf of the respondents.

3. The only ground on which the appeal came to be rejected

confirming the order of the Assessing Officer is that the petitioner herein had not availed the ample opportunities given to submit his objections before the authorities.

4. The learned counsel for the petitioner submitted that pursuant to the direction of the first respondent herein, they have produced all the accounts and documents before the Assessing Officer and though there was some delay in the production of the documents, the Assessing Officer ought to have atleast considered the materials produced before him. Even otherwise, the learned counsel would submit that the Appellate Authority ought to have considered this aspect. The other ground raised by the learned counsel for the petitioner is that the documents were produced pursuant to the orders of the Appellate Authority and hence, there was no justification on the part of the Assessing Officer to ignore the same.

5. The learned Government Advocate on the other hand, submitted that, this is the matter where the Appellate Authority earlier had remanded the appeal with a direction to furnish the D7 records. The present proceedings is a second round of litigation. By reiterating the averments made in the counter affidavit, the learned Government Advocate would submit that the petitioner had received D7 records as early as on 29.09.2011 but failed to file their reply within 15 days from the date of receipt of the D7 records and thereby caused the delay of 4 months and 24 days to reply to the copies of the D7 records, which is inordinate and therefore, there was no infirmity in the findings of the authorities, which are impugned in the present Writ Petition.

6. It is not in dispute that there was a considerable delay on the part of the petitioner herein to reply to the copies of the D7 records or to raise his objections otherwise. As such, it cannot be strictly said that the impugned orders suffer from any infirmity. Nevertheless, by taking into consideration of the fact that the petitioner was earlier not supplied with the D7 records but the same came to be done on the instructions of the Appellate Deputy Commissioner, Erode, the initial portion of the delay can be deemed to have been supported with a proper explanation. Though the petitioner had not thereafter adhered to the time limits stipulated for furnishing his objections, in my view, if a lenient approach is extended to the petitioner on the facts of the present case and also by putting him on certain terms, thereby protecting the interest of the department also, the ends of justice could be secured.

7. In the light of the above observations, the petitioner is directed to deposit 50% of the tax and surcharge amount before the second respondent herein, after deducting any amount of tax

that would have been already paid by him pending the proceedings, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the impugned order of the second respondent as confirmed by the first respondent in his proceeding in AP.11/2012 (TNGST) dated 28.08.2012 are set aside and the matter is remanded back to the second respondent for fresh consideration, who shall consider the matter afresh after giving due opportunity to the petitioner and on consideration of the objections filed. Such an exercise shall be commenced and concluded, within a period of 3 months from the date of 50% of deposit made by the petitioner as ordered in this Writ Petition.

8. With the above observations and direction, the Writ Petition is disposed of. Consequently connected Miscellaneous Petition is closed. No costs.

DP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT),
No.38, Poongundranar Street,
Karungalpalayam, Erode.

2.The Commercial Tax Officer,
Chithode Assessment Circle,
Erode.

+1cc to Mr.R.Hemalatha Advocate, SR.No.50836
+1cc to the Special Govt.Pleader (Taxes), Vide Sr.No.51320

W.P.No.4400 of 2013
and
M.P.No.2 of 2013

Kak(25/07/2019)