IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.14602 of 2019
and W.M.P.Nos.14594 and 14595 of 2019

Sri Balaji Traders
Rep. By its Partner
T.C.Gunasekaran
No.5, Imperial Road
Cuddalore OT - 607 003. .. Petitioner

vs.

The Assistant Commissioner (CT) (FAC)
Cuddalore (Town) Assessment Circle
No.8, Sub Jail Road
Manjakuppam
Cuddalore - 607 001. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 10.04.2018 in TIN.33794380803/2011-12 passed by the respondent herein and quash the same and consequentially direct the respondent to consider the representation dated 16.11.2018 filed by the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.J.Rajmohan

For Respondent : Ms.Dhanamadhri,
Government Advocate

ORDER

Mr.J.Rajmohan, learned counsel on record for the petitioner is before this Court. Ms.Dhanamadhri, learned Government Advocate (Tax) accepts notice on behalf of the sole respondent.

2. With the consent of both the learned counsel, the main writ petition itself is taken up for disposal though this writ petition is listed under the caption 'FOR ADMISSION' in the motion list TODAY.

3. The entire matter turns on a very narrow compass.

4. The petitioner is one Sri Balaji Traders.

5. Before this Court embarks upon the exercise of disposing of this writ petition on merits, it is necessary to mention that this Court is informed that the petitioner Sri Balaji Traders is a partnership firm. If that be the case, it should have been described with the prefix 'M/s', which has not been done. Be that as it may, partnership firm is only a compendious name and therefore the question is as to whether this writ petition is maintainable is left open to be decided in a matter where there is serious contest in this regard.

6. With the aforesaid prefatory note, this Court now embarks upon the exercise of disposing of this writ petition on merits.

7. Petitioner is an assesee in the books of Assistant Commissioner (CT), Cuddalore (Town) Assessment Circle, who is the sole respondent in the instant writ petition. Petitioner was filing monthly returns for the assessment year 2011-12.

8. The petitioner was reassessed in proceedings dated 15.12.2014. Vide the reassessment order, a specified amount (as specified in the impugned order) was ordered to be reversed and this was with regard to 'Input Tax Credit' ('ITC' for brevity). To be noted, a sum of Rs.99,683/- was ordered to be reversed on a turn over of Rs.7,47,631/- and a penalty of Rs.99,683/- was also levied.

9. The petitioner preferred an appeal before the appellate authority and the appellate authority remitted the matter back to the respondent with a direction to verify the sellers Annexure II along with relevant books of the appellant and pass orders in accordance with law.

10. Summons were issued to the petitioner and this was also followed by a pre-assessment notice. A perusal of the impugned order reveals that the petitioner did not respond to the summons as well as the pre-assessment notice. To be noted, this aspect of the matter is not disputed. All that is submitted before this Court is that one of the partners of the petitioner firm was indisposed/hospitalised and the records could not be produced owing to this reason. To be noted, the time taken/time that elapsed in the process of summons being issued and pre-assessment notice being sent (both of which did not evoke a reply from the writ petitioner) itself is one and half years. This is also not in dispute. The impugned order itself came to be passed on 10.04.2018. The case file placed before this Court

reveals that this writ petition has been filed only on 12.04.2019 one year later. All these aggravate the situation for the petitioner and all these are facts which leaves this Court to believe that the petitioner has been recalcitrant with regard to the proceedings which have culminated in the impugned order. It is also to be noted that all the partners are equally responsible and in the stated position/undisputed facts and circumstances of the case, purported explanation of one of the partners that too with no supporting documents given by the petitioner is hardly acceptable.

11. Petitioner not having responded to the summons as well as the pre-assessment notice, now cannot have the impugned order assailed after one year in the instant writ petition, more so when one and half years have been subsumed in summons and pre-assessment notice being issued for which admittedly there was no response from the petitioner.

12. The petitioner had not even sent a reply seeking time citing illness.

13. In the light of the narrative supra, this Court is convinced that there is no ground to interfere qua the impugned order.

14. This writ petition is bereft of merits and the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsm

To
The Assistant Commissioner (CT) (FAC)
Cuddalore (Town) Assessment Circle
No.8, Sub Jail Road
Manjakuppam
Cuddalore - 607 001.

+1cc to Mr.J.Rajmohan, Advocate SR.No.45517

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VP(CO)
GMY(27/06/2019)