IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.16798 of 2019

&

W.M.P.No.16399 of 2019

Tvl.Ever Green
Represented by its Proprietor
Mrs.Kalaimani
No.58/2, K.A.Koil Street
Kancheepuram-1 .. Petitioner

Vs.

1) The State Tax Officer (Addl.)
Tindivanam Assessment Circle
Tindivanam

2) The Appellate Deputy Commissioner (CT)
Commercial Tax Department
Cuddalore

3) The Branch Manager
Syndicate Bank
Plot No.22,23,24
Vallal Panchiyappan Street
Kancheepuram - 631 501 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records pertaining to the impugned order passed by the 1st respondent in TIN-33694722545/2013-14 dated 1.02.2019 and quash the same as unconstitutional and violation of principles of natural justice.

For Petitioner : Mr.K.M.Malar Mannan

For Respondent : Mr.G.Dhanamadhri
Government Advocate

O R D E R

Mr.K.M.Malar Mannan, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate, who accepted notice on behalf of Respondents 1 and 2, is before this Court.

2. To be noted, third respondent is the Branch

Manager, Syndicate Bank, where the writ petitioner had an account and considering the controversy in the instant writ petition, this Court is informed that third respondent is only a formal party and does not have a adversarial position qua this lis.

3.Therefore, with the consent of learned counsel on both sides, the main writ petition itself is taken up and is being disposed of.

4. It is submitted by learned counsel for writ petitioner that writ petitioner is a dealer in spares for bulldozers and earth moving equipments. Learned counsel submits that writ petitioner, who was carrying on business in Tindivanam, has closed down the business.

5. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

6. The Enforcement wing conducted a surprise inspection on 22.01.2014 and thereafter, a revised Assessment Order came to be passed. It was carried in appeal to the Appellate Authority. To be noted, second respondent is the Appellate Authority.

7.It is not in dispute that second respondent Appellate Authority remanded the matter back to the first respondent, who is the Assessing Officer.

8.Post remand, the first respondent Assessing Officer has sent notices and summons dated 28.09.2015, 13.10.2015, 16.11.2015 and 24.06.2017. Though the writ petitioner was given time to produce all relevant books of accounts, there was no response from the writ petitioner. Learned counsel for writ petitioner submits that writ petitioner has closed down his business in Tindivanam and settled down in Kancheepuram. Learned counsel for writ petitioner also submits that respondents are aware of the Kanheepuram address as all the records have been submitted in the course of the appeal. It is submitted that writ petitioner could not respond to the aforesaid notices and summons because they were sent to the Tindivanam address and they were ultimately not served on the writ petitioner.

9. A further perusal of the impugned order reveals that though the tax liability was little over Rs.3.5 lakhs, Rs.3,50,182/- (Rupees Three Lakhs Fifty Thousand One Hundred and Eighty Two) to be precise, a substantial part of the same i.e., Rs.3,25,966/- (Rupees Three Lakhs Twenty Five Thousand Nine Hundred and Sixty Six) had been paid and the balance is only little over Rs.24,000/-, besides three different penalties, one under Section 27

(3)(c), second under Section 27(4)(ii) and third one under Section 63A(2) adding upto Rs.5,23,796/-.

10. It is submitted by learned Revenue counsel that though the tax liability is only little over Rs.24,000/-, owing to the earlier suppression, penalties have been imposed.

11. Considering that the tax liability is only Rs.24,846/-, but the penalties add upto Rs.5,23,796/-, without expressing any opinion on merits of the matter, considering the facts and circumstances of this case, this Court deems it appropriate to remand the matter back to the first respondent for passing orders afresh after giving an opportunity of being heard to the writ petitioner.

12. Therefore, the following order is passed:

a) Impugned order dated 01.02.2019 bearing reference TIN-33694722545/2013-14 is set aside. To be noted, impugned order is set aside solely for the purpose of facilitating a personal hearing to the writ petitioner. In other words, impugned order is set aside without expressing any opinion or view.

b) With the consent of learned counsel on both sides, personal hearing is now fixed on 11.07.2019 (Thursday) at 12 Noon. The venue shall be the office of the first respondent.

c) Writ petitioner undertakes to appear for the personal hearing on the aforesaid date, time and venue and produce all supporting documents.

d) If the writ petitioner fails to avail the personal hearing on the aforesaid date and time, the impugned order will stand revived.

e) If the writ petitioner avails the personal hearing, the first respondent shall consider all the objections and documents filed by the writ petitioner in the personal hearing and then pass orders afresh in accordance with law within a period of three weeks from the aforesaid date of personal hearing.

f) Orders passed afresh shall be communicated to the writ petitioner under due acknowledgement to the Kancheepuram address, namely No.58/2, K.A.Koil Street, Kancheepuram-1 in accordance with rules in this regard under TNVAT Act.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa
To

1) The State Tax Officer (Addl.)
Tindivanam Assessment Circle
Tindivanam

2) The Appellate Deputy Commissioner (CT)
Commercial Tax Department
Cuddalore

3) The Branch Manager
Syndicate Bank
Plot No.22,23,24
Vallal Panchiyappan Street
Kancheepuram - 631 501

+1cc to Mr.K.M.Malar Mannan , Advocate SR.No.51603
+1 cc to spl Government Pleader Sr.No. 52485

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A.SK(08/07/2019)