IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.5942 to 5945 of 2017
and
W.M.P.Nos.6347 to 6350 of 2017

AAI Officer's Institute Chennai,
No.19, GST Road,
Meenambakkam, Chennai - 27
Rep. by Mr.M.Ravichandran,
S/o.Meenakshisundaram
Secretary of AAI Officer's
Institute Chennai,
Assistant General Manager
(Engineering - Electric)
1st Floor, Operational Offices,
Southern Region,
Chennai Airport, Chennai - 27.
...Petitioner in all WPs

Vs

1. The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 5.

2. The Deputy Commissioner,
Zone-9, Commercial Taxes Department,
Greams Road, Chennai.

3. Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No,17, Loganathan Street,
Choolaimedu, Chennai.
...Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 3rd respondent in TIN/33966405591/2012-13, (W.P.No.5942/2017) TIN/33966405591/2013-14, (W.P.No.5943/2017)

TIN/33966405591/2014-15 (W.P.No.5944/2017) and TIN/33966405591/2015-16 (W.P.No.5945/2017), dated 02.12.2016 and quash the same and direct the 3rd respondent to release the bank attachment.

For Petitioner : Mr.B.Ramessh Kumaar
(in all WPs)

For Respondents: Mr.V.Haribabu, AGP
(in all WPs)

COMMON ORDER

By placing reliance on a decision of this Court dated 09.01.2015 passed in W.P.No.21453 of 2008 in the case of Tulsyan Nec Ltd. Vs. The Commissioner, the petitioner has raised a ground stating that when there is a proposal to levy penalty, the Assessing Officer has to specifically record a finding that the conduct of the dealer was deliberate and the suppression was willful with an intention to avoid payment of tax.

2. In the instant case, the impugned order reads that a notice to propose penalty was acknowledged by the petitioner herein, to which he has not submitted any objections. Observing so, the tax as well as the penalty came to levied through the impugned orders. Pursuant to the same, the petitioner claims to have given a representation on 28.12.2016 to the 2nd respondent herein, stating that the petitioner is a non-profit association formed by the officers of Airports Authority of India and the bar is run exclusively for the officers of Airport Authority. Since they were in shortage of exclusive staffs for maintaining accounts, they were unable to comply with the VAT remittance requirements. In view of this reasoning, a request was made through this representation to the 2nd respondent, seeking for waiver of penalty.

3. As held in the aforesaid decision of this Court, the respondents are duty cast to set forth the reasoning for levying of tax as well as penalty, which is absent in the present case. Even otherwise, the learned counsel for the petitioner would submit that the representation seeking for waiver of penalty has been received by the 2nd respondent herein and no orders have been passed.

4. The learned Additional Government Pleader on the other hand would submit that since the acknowledgment to the

representation has not been furnished, the submission of the representation itself is doubtful. The learned Additional Government Pleader also submitted that there was no infirmity in the impugned orders insofar as the levy of tax as well as penalty is concerned.

5. When the representation made to the 2nd respondent to waive the interest was pending before them and taking into consideration that the order was passed without recording a finding as to whether the conduct of the assessee in suppression was willful, this Court is of the view that a direction could be issued to the 2nd respondent to consider the petitioner's representation for waiver on this ground.

6. In the light of the above observations, the writ petitions stand disposed of, with a direction to the 2nd respondent to consider the petitioner's representation dated 28.12.2016, which has now been produced before this Court and a copy has also been furnished to the learned Additional Government Pleader representing the 2nd respondent, on its own merits and in accordance with law, within a period of 30 days from the date of receipt of copy of this order. Till such decision is taken on the representation, the respondents shall not take any cohesive action pursuant to the impugned orders. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 5.

2. The Deputy Commissioner,
Zone-9, Commercial Taxes Department,
Greams Road, Chennai.

3. Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No,17, Loganathan Street,
Choolaimedu, Chennai.

+1cc to the Special Government Pleader Sr.50802
+4cc to Mr.B.Rameshkumar, Advocate Sr.50656, 50653, 50655, 50654

W.P.Nos.5942 to 5945 of 2017
and
W.M.P.Nos.6347 to 6350 of 2017

pa[co]
srg 30/07/2019