IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32357, 32367, 32374 & 32376 of 2018
and
W.M.P.Nos.37556, 37557, 37560, 37561,
37567, 37568 37571 of 2018

N.Rajendran
... Petitioner in all W.Ps.

vs.

1.The Commercial Tax Officer(Main)
Kallakurichi,
Villupuram District.

2.The State Tax Officer
Kallakurichi,
Villupuram District.
... Respondents in all W.Ps.

Prayer in W.P.Nos.32357, 32367 & 32374 of 2018 : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Certiorari to call for the records pertaining to the impugned Orders dated 30.09.2015, 24.10.2015 & 24.10.2015 issued in TIN 33714781413 of 2011-12, 2012-13 & 2013-14 respectively passed by the 1st respondent and quash the same.

Prayer in W.P.No.32376 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue Certiorari to call for the records pertaining to the impugned auction notice dated 28.05.2018 issued in Na.Ka.A3/366/2015 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.M.Mani Maran

For Respondents : Mrs.G.Dhana Madhri,
Government Advocate (T)
for R1 & R2

ORDER

These writ petitions are filed challenging the orders of assessment passed in respect of assessment years 2011-12 to 2013-14 dated 30.09.2015 & 24.10.2015 and consequential auction notice dated 28.05.2018.

2. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

3. It is seen that the petitioner has earlier approached this Court and filed writ petitions in W.P.Nos.12758 & 12760 of 2015 challenging the order of assessment in respect of the very same assessment years on the ground that no personal hearing was given to them. This Court, by order dated 28.04.2015, allowed those writ petitions and set aside the assessment orders with a direction to the Assessing Officer to give an opportunity of personal hearing. Thereafter, the Assessing Officer issued a personal hearing notice to the petitioner on 17.07.2015 and consequently, upon granting such personal hearing, the impugned orders of assessment were passed as early as on 30.09.2015. The petitioner did not question those orders immediately. However, when the other impugned proceedings viz., auction notice was issued on 28.05.2018 for auctioning the property belonging to the petitioner to realise the tax dues, the petitioner has filed these writ petitions.

4. I do not think that the present challenge before this Court as against the orders of assessment passed as early as on 24.10.2015 can be entertained solely on the reason of delay and latches. If really the petitioner is aggrieved against the said orders, he should have filed either statutory appeal before concerned Appellate Authority or approached this Court and challenge the same immediately after passing the said order. On the other hand, the petitioner has slept over the matter for a long time and thereafter filed these writ petitions only when auction notice was issued against them. So long as the orders of assessment are passed and when the petitioner has not questioned the same immediately, the Assessing Officer cannot be found fault with in issuing the other impugned proceedings viz., the auction notice.

5. Therefore, without expressing any view on the merits of the matter, these Writ Petitions are dismissed only on the ground of delay and latches. However, as it is contended that the assessment orders were made only on the reason of belated filing of return and that cannot be the reason for denying the eligibility of the petitioner to claim input tax credit, this Court is of the view that all these contentions can be raised before the next fact finding authority viz., the First Appellate

Authority by way of filing an appeal. Therefore, it is open to the petitioner to challenge the orders of assessment before the Appellate Authority, within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same shall be considered and orders will be passed on merits and in accordance with law without reference to the period of limitation of appeal. At the same time, the petitioner shall comply with other statutory requirements while preferring such appeal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer(Main)
Kallakurichi,
Villupuram District.

2.The State Tax Officer
Kallakurichi,
Villupuram District.

+1cc to Mr.M.Mani Maran, Advocate sr.no.1331
+1cc to Special Government Pleader(Taxes) sr.no.2210

W.P.Nos.32357, 32367,
32374 & 32376 of 2018

vgi(co)
nr 06/02/2019