IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33912 and 33919 of 2018
and
W.M.P.Nos.39373, 39375, 39380 & 39383 of 2018

1. M/s.Ohm Sakthi International,
Represented by its Partner
S.Muthukumaran,
No.83-A/7, 2nd Floor,
Cuddalore Main Road,
Panruti - 607106, Cuddalore District.

...Petitioner
(in WP.No.33912 of 2018)

2. M/s.Sri Lakshmi Impex,
Represented by its Partner
S.Muthukumaran,
No.83-A/7, Cuddalore Road,
Panruti - 607106, Cuddalore District.

...Petitioner
(in WP.No.33919 of 2018)

Vs.

The Assistant Commissioner (State Tax),
Panruti (Town) Circle,
Panruti,
Cuddalore District.

...Respondent
(in both WPs)

Writ Petition No.33912 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in its impugned proceedings made in TIN: 33696300444/2016-2017 dated 07.06.2018 and the consequential proceedings in Na.Ka. A3/887/2018 dated 17.10.2018 under Section 84 of the TNVAT Act, 2006 and quash the same as illegal and arbitrary and consequently direct the respondent to accept the Audit Report in Form WW under Section 63-A of the TNVAT Act, 2006 for the financial year 2016-2017 as per the judgment of the Hon'ble High Court of Madras in the case Tvl.Nithra Furniture P. Ltd., Vs. The Assistant Commissioner (CT), Chrompet Assessment Circle, Chennai in W.A. Nos.1148 & 1149 of 2015 dated 11.08.2015 and re-do the assessment in accordance with law after affording an opportunity of personal hearing.

Writ Petition No.33919 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in its impugned proceedings made in TIN: 33294481914/2016-2017 dated 06.06.2018 and the consequential proceedings in Na.Ka. A3/886/2018 dated 17.10.2018 under Section 84 of the TNVAT Act, 2006 and quash the same as illegal and arbitrary and consequently direct the respondent to accept the Audit Report in Form WW under Section 63-A of the TNVAT Act, 2006 for the financial year 2016-2017 as per the judgment of the Hon'ble High Court of Madras in the case Tvl.Nithra Furniture P. Ltd., Vs. The Assistant Commissioner (CT), Chrompet Assessment Circle, Chennai in W.A. Nos.1148 & 1149 of 2015 dated 11.08.2015 and re-do the assessment in accordance with law after affording an opportunity of personal hearing.

For Petitioner : Mr.J.Prasanna Kumar
(in both WPs)

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in both WPs)

COMMON ORDER

These Writ Petitions are filed challenging the orders of assessment dated 07.06.2018 and 06.06.2018 passed in respect of assessment year 2016-2017.

2. The Assessing Officer has passed the impugned orders and imposed tax and penalty on the petitioners only on the reason that the petitioners did not file the Auditor Statement in the prescribed format in Form WW within time.

3. It is the contention of the petitioners that they met the Assessing Officer in person and explained that the entire files are with their Auditors and they were making necessary arrangements to file the Auditor's Report in Form WW and that the petitioners' Accountant had fallen sick and was out of town for more than three months and therefore, they could not follow up the matter. Therefore, it is contended, that as a result, it caused delay in filing the auditor report, by which time, the impugned assessment orders were passed by the respondent.

4. The learned counsel appearing for the petitioners submitted that the delay in filing the Auditor Report cannot be the reason to deny the benefit to the petitioners out of such report. In support of such contention, the learned counsel relied on a decision made by this Court in W.P.No.15598 of 2017 dated 21.06.2017. While passing the said order, this Court

relied on the order passed by the Division Bench of this Court in W.A.Nos.1148 & 1149 of 2015 dated 11.08.2015.

5. The learned Additional Government Pleader appearing for the respondent, on the other hand, contended that since the petitioners did not file their Audit Report in time, the Assessing Officer has left with no other option except to pass the impugned orders.

6. Perusal of the facts and circumstances would show that the issue involved in these cases is squarely covered by the decision of this Court made in W.P.No.15598 of 2017, wherein, at paragraph Nos. 4 to 8 it has been observed as follows:

> "4. The learned counsel appearing for the petitioner submitted that such belated filing of Form WW was not due to the fault of the petitioner on their own and on the other hand, the same was made ready, a little later and consequently, the petitioner filed the same belatedly along with penalty of Rs.10,000/- also. Therefore, he submitted that the respondent may be directed to consider the case of the petitioner based on the Form WW submitted on 10.02.2017 and pass fresh order of assessment, after giving due opportunity of hearing to the petitioner.
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> 5. In support of the contention, the learned counsel relied on a Division Bench decision of this Court made in W.A.Nos.1148 and 1149 of 2015 (between Nithra Furniture P. Ltd. vs. The Asst. Commissioner (CT), Chennai), dated 11.08.2015, wherein, almost in identical circumstances, the Division Bench has set aside the assessment order and remitted the matter back to the Assessing Officer for taking on file the Form WW filed by the petitioner therein and pass fresh orders. Paragraphs 7 to 9 of the said order read as follows:
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>> ''7. If we have a look at the scheme of the Act, it will be clear that what the appellant is obliged to do under the Act, is to file monthly returns and not really the auditor's report. In any case, after the best of judgment assessment orders are passed, the appellant has filed Form WW. The correctness of the particulars reflected in Form WW are not in question. In such

circumstances, the rejection of the request for passing revised assessment orders is not in accordance with law. This aspect has not been properly appreciated in the writ petitions.

8.Once the original defect, if at all it was a defect, was cured by the assessee, by filing Form WW, the respondent cannot simply throw the form out on the ground that it was filed beyond the period of limitation. This is especially so when best of judgment assessment orders have been passed by him.

9.In view of the above, the writ appeals are allowed and the common order of the learned Judge is set aside. The order dated 18.5.2015 passed by the respondent is set aside. The matter is remitted back to the respondent for taking on file Form WW filed by the appellant in respect of both the assessment years. The appellant has already paid the penalty. Therefore, the respondent shall accept Form WW and pass orders fresh. No costs. Consequently, the above MPs are closed.''

6. The learned counsel appearing for the respondent submitted that the facts and circumstances of the present case and the issue involved herein are undoubtedly covered by the decision of the Division Bench of this Court as cited supra.

7. Considering the above stated facts and circumstances and more particularly of the fact that the present issue involved is covered by the above decision of the Division Bench of this Court, I have no hesitation in setting aside the impugned order of assessment for remitting the same back to the Assessing Authority to pass fresh orders, after considering the Form WW submitted by the petitioner, though belatedly. In this case, admittedly, the petitioner has paid the penalty amount as well. Therefore, there cannot be any impediment for the respondent to re-consider

the matter afresh.

8. Accordingly, the writ petition is allowed, the impugned order of assessment is set aside and the matter is remitted back to the Assessing Authority for considering the Form WW submitted by the petitioner and pass a fresh order of assessment, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Authority within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

7. Considering the above stated facts and circumstances and in view of the order passed in similar case, viz., W.P.No.15598 of 2017 as referred to supra, these Writ Petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer for considering Form WW submitted by the petitioners and pass fresh orders of assessment after giving due opportunity of personal hearing to the petitioners. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. Since the petitioners said to have already filed their Audit Report along with the applications filed under Section 84 of the TNVAT Act, 2006, the same shall be taken into account and fresh orders of assessment shall be passed as stated supra. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (State Tax),
Panruti (Town) Circle,
Panruti,
Cuddalore District.

+2cc to Mr.J.Prasanna Kumar, Advocate, S.R.No.7480

W.P.Nos.33912 & 33919 of 2018

CP(CO)
GSP(06/03/2019)