BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).Nos.14259 and 14260 of 2019
and
WMP(MD)Nos.10707 and 10708 of 2019

Vijay Industries,
Near RTO Office,
365F/1-Dindigul Road,
Palani, Dindigul District,
rep by its Proprietor P. Ramasamy
...Petitioner (In both petitions)

Vs.

The Assistant Commissioner,
Commercial Taxes,
Palani,
Dindigul District. ...Respondent (In both petitions)

Prayer in both petitions : Writ Petitions are filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records pertaining to the orders passed by the respondent in TIN:33505282194/2012-13 and 2013 -2014 dated 29.04.2019 and quash the same.

In both petitions:

For petitioner : Mr.S.R.Suresh Kumar

For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader

COMMON ORDER

These writ petitions have been filed for issuance of writ of Certiorari to quash the impugned orders passed by the respondent in TIN:33505282194 in respect of the periods 2012-13 and 2013 -2014 dated 29.04.2019.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondent.

3. Since the petitioner is on a second round of litigation before this Court, both learned counsel concur upon the position that the writ petitions may be taken up for hearing, adjudication and disposal at the stage of admission itself.

4. The orders impugned are assessments under the provisions of the Tamilnadu Value Added Tax Act (in short 'Act') for the periods 2012-2013 and 2013-2014. Orders of assessment passed earlier for the same period, both dated 14.05.2015, were the subject matter of challenge in W.P.(MD)Nos.9803 and 9804 of 2015. This Court, by order dated 15.11.2018, had set aside the assessments on the ground of violation of natural justice, remitting the matters to the file of the respondent for finalization afresh. The respondent was directed to issue notice afresh to the petitioner and conclude the assessments after extending reasonable opportunity.

5. Pursuant to the aforesaid order, notice to the petitioner appears to have been issued by the assessing authority on 18.03.2019.

6. However, the fact remains that Returns of Turnover (in short 'ROT') for the periods in question were admittedly not filed by the petitioner earlier. The Assessing Officer has, in the aforesaid circumstances, merely completed the assessments based upon details of transactions reported by third party dealers.

7. The assessing officer had, in the previous round, concluded assessments in a similar fashion. Prior to completion, a pre-assessment notice dated 18.03.2019 had been issued that had not received any response from the petitioner. The reason put forth before this Court for non-compliance with the aforesaid notice had been that the petitioner had met with a very serious accident on 02.05.2013 suffering brain as well as spinal injuries. This Court, vide its order dated 15.07.2019, has been of the view that the seriousness of the accident justified non-compliance by the petitioner with the pre-assessment notice issued by the Officer.

8. In the circumstances as noted above by me, particularly the fact that petitioner was under medical treatment from 02.05.2013, I am of the view that the petitioner should be afforded one opportunity to set things in order. The impugned orders of assessment are thus set aside with the following directions:

(i) The petitioner will file returns for the period 2012-2013, 2013-2014 along with proof of remittance of taxes with interest up to date of filing within a period of one week from today;

(ii) The returns will be accompanied by detailed replies to notice dated 18.03.2019 issued by the officer;

(iii) Upon receipt of returns as well as the reply/objections to the notice, the Assessing Authority shall call upon the petitioner to appear on a specified date and time for personal hearing;

(iv) Orders of assessments shall be passed de novo taking into account the ROTs to be filed, replies filed by the petitioner as well as Circulars issued by the Special Commissioner, Commercial Tax Department, in regard to the issues arising from out of the ROTs.

9. These writ petitions are allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-II)

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To,

The Assistant Commissioner,
Commercial Taxes,
Palani,Dindigul District.

+2 CC to M/s.S.R.SURESH KUMAR, Advocate
(SR-71394[F] dated 26/06/2019)

+1 CC to M/s.SPL GP (SR-72154[F] dated 28/06/2019)

W.P(MD).Nos.14259 and 14260 of 2019

and

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26.06.2019

ES/28.06.2019/3P/5C