IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.08.2020
Pronounced on	01.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.10865 & 10866 of 2016
and
W.M.P.Nos.9478 to 9481 of 2016

M/s.Saravana Electronic Goods
and Applicances,
Rep. by its Proprietrix – S.Sasirekha,
Mathavi Complex,
No.67-A, East Main Road,
Mettur, Mettur Dam,
Salem District – 636401. ...Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Omalur,
Salem District. ..Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings in TIN Nos.33843247044/2011-12 and 33843247044/2012-13, dated 17.11.2015 and quash the same.

For Petitioner : Mr.S.Rajasekar
(in both WPs)

For Respondent : Mr.R.Swarnavel
(in both WPs) Government Advocate

COMMON ORDER

Today, the matter is called through Video Conferencing. By consent of both the parties, these Writ Petitions are taken up for final disposal.

2. The brief facts of the case are as follows:

The petitioner is a dealer in home appliances and was assessed to the best of judgment for the assessment years 2011-12 and 2012-13. When the petitioner had challenged the assessment, this Court, through its order dated 25.02.2015 passed in W.P.Nos.4664 & 4665 of 2015, had set aside the assessment orders and remitted back the same for fresh consideration. Consequently, the respondent had passed fresh orders for both the assessment years on 30.06.2015. As against the same, the petitioner had filed applications under Section 22(6) of the Tamil Nadu Value Added Tax Act, 2006, for reopening the assessment for both the years. On the said applications, the impugned rejection orders were passed.

3. The only ground on which the petitioner's request for revision of the assessment came to be rejected is that Section 22(6) of the TNVAT Act prescribes a time limit of 30 days for seeking revision of the assessment. Since the applications under Section 22(6) were filed on 16.10.2015 and the 30 days period had already lapsed on 01.08.2015, the applications were rejected as time barred.

4. In the applications under Section 22(6) of the TNVAT Act, the petitioner had adduced reasons for the delay in filing and according to the learned counsel for the petitioner, the reasons were beyond the control of the applicant. A perusal of Section 22(6)(a) of the TNVAT Act indicates that there is an inherent power on the Assessing Authority under this provision for entertaining an application beyond the period of 30 days as prescribed under Section 22(6). The consideration of such an application, beyond the period of limitation, should be to the satisfaction of the authority that the reasons adduced for the delay must be beyond the control of the applicant. As such, when the petitioner had adduced certain reasons, which according to him, were beyond his control for not making the applications in time, there is a duty cast on the authority to consider the reasoning and thereby pass a speaking order. A mere sentence in the rejection order that "the reasons adduced for non-filing of the returns in time are not acceptable" alone is not sufficient and the order should indicate that the authority has applied his mind and thereby pass a speaking order.

5. In this background, this Court has perused the reasons adduced by the petitioner for making the applications, after a period of 30 days. According to the petitioner, the task of furnishing returns was handed over to a part time accountant, who had absconded and not traceable and that there was also a death in the family during the period. The reasons seem to be acceptable.

6. Accordingly, the impugned assessment proceedings dated 17.11.2015 for the assessment years 2011-12 and 2012-13 are quashed. Consequently, the delay in filing the applications under Section 22(6) beyond the period of 30 days, is hereby condoned and the matters are remanded back to the respondent herein for fresh consideration on its own merits and in accordance with law. The respondent shall endeavour to complete the assessment proceedings as expeditiously as possible, after giving due opportunity of personal hearing to the petitioner, if necessary through Video Conferencing.

7. The Writ Petitions stand thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk

To

The Assistant Commissioner (CT),
Omalur,
Salem District.

+2ccs to M/s.R.Heamlatha , Advocate SR.No. 28522&28523
+1 cc to Spl Government Pleader Sr.No. 28638

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A.SK(24/09/2020)