IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.03.2020
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P.Nos.1886 to 1889 of 2009
and
M.P.Nos.1,1,1 & 1 of 2009

TVL.Balaji Fabricators P.Ltd.,
Represented by S.V.Prasasd,
Managing Director,
No.6 & 7, 3rd Floor,
Parsan Complex, Anna Salai,
Chennai - 6.
... Petitioner in all WPs.

Vs.

The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
44, Greenways Road, Chennai - 28. ... Respondent in all WPs.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent in CST.Nos.38696/1986-87, 38696/1987-88, 38696/1988-89 and 38696/1989-90 dated 30.09.2008 and quash the same as illegal and against the law laid down by this Honourable Court and direct the respondent follow the law laid down by this Honourable Court and the Apex Court for making assessment u/s 6(A) of the CST Act and also law laid down by this Honourable Court on the question of imposing penalty u/s 12(3) and 16(2) of the Act.

For Petitioner : Mr.D.Vijayakumar in all WPs.

For Respondent : Mr.Hariharan, AGP (T)
in all cases

COMMON ORDER

Challenging the revision orders dated 30.09.2008 passed by the respondent in respect of the assessment years from 1986-87 to 1989-90, the petitioner has come up with these writ petitions.

2.According to the petitioner, they are the assessee on the file of the respondent. They were originally assessed under the

Central Sales Tax Act, 1956 by the respondent for the years in question separately. Subsequently, it was found that exemption from tax towards branch transfer allowed to them, was wrong and hence, assessments were revised by the respondent, by disallowing exemption claimed towards branch transfer and treating the same as inter-State taxable sales and penalty was also levied under Section 12(5)(iii) of the TNGST Act, 1959 r/w Section 9(2) of the CST Act, 1956. Challenging the revision of assessments, the petitioner filed appeal before the Appellate Assistant Commissioner (CT) IV, Chennai, who set aside the said assessments and remanded the matter to the respondent for fresh consideration. Pursuant to the same, the assessments were reopened and revision notices were issued to the petitioner. After considering the replies submitted by the petitioner, the respondent confirmed the revision of assessments and passed the orders impugned herein.

3.Upon notice, the respondent filed a detailed counter affidavit, inter alia stating that in response to the direction issued by the Appellate Authority, the respondent gave opportunity to the petitioner for production of the relevant records, but the petitioner merely filed their objections without producing any record and hence, the respondent has no other alternative except to confirm the proposal already made. It is further stated therein that as the respondent has acted as per the direction of the Appellate Authority, the petitioner ought not to have any grievance against the revision orders passed by the respondent; even otherwise, it is always open to the petitioner to file appeal before the Appellate Authority as per Section 31 of the TNGST Act; whereas the petitioner without availing the said statutory remedy, rushed to this Court by filing the present writ petitions and hence, the same are liable to be dismissed.

4.On 24.04.2009, this Court, while admitting these writ petitions, has granted an order of interim stay on condition that the petitioner shall deposit 25% of the tax demanded, within a period of six weeks. It is reported that the said condition has been duly complied with by the petitioner.

5.Today, when the matter came up for consideration, the learned counsel for the petitioner restricted the relief sought for herein to the extent of permitting the petitioner to file appeals before the Appellate Authority and on such filing, the appellant authority be directed to consider the same and pass orders on merits.

6.The learned Additional Government Pleader (T) appearing for the respondent has no serious objection for granting such relief to the petitioner.

7.Considering the facts and circumstances of the case and having regard to the submissions made by the leaned counsel on either side, this Court permits the petitioner to file appeals as against the orders impugned herein before the Appellate Authority within a period of three weeks from the date of receipt of a copy of this order. On such filing, the Appellate Authority shall entertain the same without raising any issue relating to limitation and dispose of the same, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, within a period of six weeks thereafter. Till such time, the respondent shall not give effect to the orders impugned herein. The Registry is directed to return the original documents, if any, filed along with these writ petitions to the petitioner.

8.Accordingly, these writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
44, Greenways Road, Chennai - 28.

+1 cc to the Special Government Pleader sr24010
+1 cc to Mr.D.Vijayakumar Advocate sr23482

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