IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11659 of 2013
and
M.P.No.1 of 2013

M/s.K.Gangaiah Chetty & Co.,
Represented by its Partner K.G.Nareshkumar,
No.51-1/9, Acharappan Street,
Chennai - 01. ...Petitioner

Vs

The Commercial Tax Officer,
Loan Square - I, Assessment Circle,
Office of the Assistant Commissioner (CT)
Chennai - 108. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the proceedings of the respondent in TIN No.0140181/2006-07 dated 20.03.2013 and quash the same and consequently direct the respondent to consider the application dated 13.03.2013 submitted by the petitioner on merits.

For Petitioner : Mr.M.Hariharan

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The relief sought for in the writ petition is to call for the proceedings of the respondent in TIN No.0140181/2006-07 dated 20.03.2013 and quash the same and to direct the respondent to consider the application dated 13.03.2013 submitted by the petitioner on merits.

2. The impugned order dated 20.03.2013 reveals that the Revision order has already been passed on 21.02.2013 and duly served to the petitioner. Accordingly, the petitioner was granted with a liberty to prefer an appeal and seek legal remedy.

3. The learned counsel for the petitioner states that the petitioner has already filed an application under Section 55 of the TNGST Act on 13th March 2013 and the authorities competent are obligated to pass final orders on the application and with before passing any order under the application, they have issued the impugned order. Thus, the impugned order is to be set aside and the authorities competent are bound to dispose of the application filed by the petitioner under Section 55 of the TNGST Act.

4. In this regard, the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in the case of Shreyas Enterprises Private Limited Vs. The Commercial Tax Officer, reported in [2008] 11 VST 38 Mad, wherein the Hon'ble Division Bench passed the following orders:

> "2. It appears that an assessment order was passed against the appellant under the Tamil Nadu General Sales Tax Act, 1959. The appellant filed a rectification petition under Section 55 of the said Act, but instead of deciding that petition on merits, the Commercial Tax Officer, Vepery Assessment Circle by order dated 08.03.2005 has observed as follows:-
>
> > "Please take notice that the contentions stated therein were examined by me. If you are aggrieved by the order, you might have availed of the statutory remedy available under Section 31 of the TNGST Act, 1959.
> >
> > I request you to make efforts to settle the arrears of tax within 3 days of receipt of the notice, failing which action under Section 26 of the TNGST Act 1959 would be taken."
>
> 3. A perusal of the above order shows that the Commercial Tax Officer has not decided the appellant's application under section 55 but has only said that the appellant may avail of his statutory remedy of appeal under Section 31 of the Act.
>
> 4. In our opinion, the Commercial Tax Officer should have decided the application under Section 55 on its merits, which he has not done.
>
> 5. In view of the above we dispose off the writ petition with a direction that the Commercial Tax Officer should decide the application of the appellant filed under Section 55 of the Act on merits expeditiously. The writ appeal is also disposed off accordingly. Consequently, WAMP No.1662 of 2005 and WPMP No.14166 of 2005 are also dismissed."

5. The learned Government Advocate appearing on behalf of the respondent is unable to establish that the application filed by the writ petitioner under Section 55 of the TNGST Act was disposed of by passing an order.

6. This being the factum, the impugned order passed by the respondent in proceedings in TIN No.0140181/2006-07 dated 20.03.2013 is quashed and the respondent is directed to consider the application filed by the writ petitioner under Section 55 of the TNGST Act on 13th March 2013 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

7. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kak

To

The Commercial Tax Officer,
Loan Square – I, Assessment Circle,
Office of the Assistant Commissioner (CT)
Chennai – 108.

+1cc to Special Government Pleader (Taxes) (SR No.34068)

+1cc to Mr.M.Hariharan (SR No.34087)

W.P.No.11659 of 2013

SSN (CO)
PR (10/08/2021)