IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.3.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Appeal No.880 of 2021 & CMP.No.5141 of 2021

M/s.Shree Venkateshwara
Enterprises, rep.by its Proprietor
Mr.R.Vijayakumar
Puducherry-605111 ...Appellant

Vs

The Commercial Tax Officer-I,
Commercial Taxes Department,
100 Ft. Road, Pudupalayam,
Puducherry-5. ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 10.12.2020 made in W.P.No.22386 of 2018.

Prayer in W.P.No.22386 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, Calling for the records on the files of the respondent in TIN/ 34020016942/2017-18 dated 08.06.2018 and quash the same being illegal invalid, without jurisdiction and violated the principles of natural justice and contrary to the law

For Appellant : Mr.D.Vijayakumar

For Respondent : Mrs.V.Usha, AGP (P)

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.D.Vijayakumar, learned counsel for the appellant and Mrs.V.Usha, learned Additional Government Pleader (Puducherry) accepting notice for the respondent.

2. This appeal has been filed by the writ petitioner - dealer challenging the order dated 10.12.2020 passed by the learned Single Judge in W.P.No.22386 of 2018.

3. The appellant is a registered dealer on the file of the respondent under the provisions of the Puducherry Value Added Tax Act, 2017 (for short, the Act) and is aggrieved by the order impugned in the said writ petition, which was filed by the appellant to set aside the assessment order dated 08.6.2018 passed under the provisions of the Act for the year 2017-18.

4. By the impugned order, the said writ petition was dismissed by the learned Single Judge on the ground that the appellant could not invoke the writ jurisdiction of this Court having not exhausted the alternate remedy of appeal available to them under the provisions of the Act. In this regard, the learned Single Judge relied upon the decision of the Hon'ble Supreme Court in the case of Assistant Commissioner (CT), LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Limited [Civil Appeal No.2413 of 2020 dated 06.5.2020] and examined the contentions of the appellant that they had a sales tax consultant by name Mr.D.Srinivasan, who had received the copy of the assessment order, but did not hand over the same to the appellant, that the letter signed by the said Mr.D.Srinivasan in the letter pad of the appellant admitting the liability was also illegal and could not be acted upon and that this was also intimated to the Assessing Officer by various letters. However, the stand taken by the appellant was disbelieved by the Writ Court and the said writ petition stood dismissed by the impugned order.

5. Before us, Mr.D.Vijayakumar, learned counsel for the appellant would vehemently contend that the consultant accepted the brief, but acted against the interest of the appellant in admitting the liability, that on the earlier occasion also, he had done so, that the Department was intimated about the conduct of the consultant and that the dealer also requested the Assessing Officer to send all communications, notices and orders directly to the appellant and not to the consultant.

6. We have heard Mrs.V.Usha, Additional Government Pleader (Puducherry) on the said submissions.

7. After carefully going through the materials on record, we find that the pleas raised by the appellant stating that the assessment order was served on the consultant and the consultant accepted the brief, etc., appear to be a cooked up story and a clear after thought so as to get over limitation for filing the appeal and with such a plea, the said writ petition was filed, which has been rightly rejected. In other words, the learned Single Judge, while dismissing the said writ petition, has not made any observation as to what would be the remedy available to the appellant.

8. In our considered view, if the appellant is foreclosed from availing the other remedies, it will not only defeat the rights of the appellant, but it will also be against the interest of the Revenue as the assessment order would continue to remain as a paper order without any room for the recovery of tax and penalty assessed and demanded. Hence, we are of the considered view that while upholding the observations made by the learned Single Judge, we are inclined to grant liberty to the appellant.

9. In the result,

i. The writ appeal is dismissed.

ii. The finding rendered by the learned Single Judge as to the maintainability of the said writ petition is confirmed;

iii. Liberty is granted to the appellant to file an appeal before the First Appellate Authority as against the levy of penalty alone subject to the condition that the appellant pays the entire tax as assessed and demanded in the assessment order dated 08.6.2018 namely Rs.3,02,883/- (Rupees three lakhs two thousand eight hundred and eighty three only);

iv. The appellant is granted eight weeks' time from the date of receipt of a copy of this judgment to pay the entire tax amount and if the same is paid, within 30 days thereafter, the appellant is granted liberty to file an appeal as against the levy of penalty alone and the First Appellate Authority shall entertain the appeal without reference to the question of limitation and take a decision on merits and in accordance with law after affording an opportunity to the appellant - dealer;

v. In the event the appellant fails to pay the entire tax amount as demanded within the time stipulated, the benefit of this order will not enure to the appellant and the appeal will be dismissed automatically in its entirety without any further reference to this Court."

10. After we delivered the above judgment, the learned counsel for the appellant submits that the appellant's bank account has been attached and necessary directions may be issued to the respondent to lift the attachment so that the tax amount can be paid.

11. The respondent is directed to take appropriate action so that the entire tax amount is directly remitted to the Department from the appellant's bank account itself. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
The Commercial Tax Officer-I,
Commercial Taxes Department,
100 Ft. Road, Pudupalayam, Puducherry-5.

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.17257

WA.No.880 of 2021&
CMP.No.5141 of 2021

GSM(CO)
KM(22/04/2021)