BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM:
THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**
AND
THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A.(MD)Nos.613 to 615 of 2021
and
C.M.P.(MD)Nos.2775, 2776 and 2778 of 2021

Tvl. Chendur Enterprises,
Rep. by its Proprietrix S.Anusuya,
888/2, Courtallam Road,
Piranoor Border,
Shencottai. ... Appellant in all W.As.

Vs.

The State Tax Officer (Inspection),
Intelligence Wing,
Tirunelveli. ... Respondent in all W.As.

PRAYER:- Writ Appeals filed under Clause 15 of the Letters Patent as against the common order dated 08.12.2020, made in W.P.(MD) Nos.17868, 17873 & 17876 of 2020.

prayer in WP(MD). 17868 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus or order or direction in the nature of the writ calling for the records in GSTIN 33ABMPA7576Q1Z0/2017-18 dated 31-10-2020 issued by the Respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 23-10-2020 judicially including the opportunity of being heard.

Prayer in WP(MD). 17873 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus or order of direction in the nature of the writ calling for the records in GSTIN 33ABMPA7576Q1Z0/2018-19 dated 31-10-2020 issued by the Respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 23-10-2020 judicially including the opportunity of being heard.

Prayer in WP(MD). 17876 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus or order of direction in the nature of the writ calling for the records in GSTIN 33ABMPA7576Q1Z0/2019-20 dated 31-10-2020 issued by the Respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 23-10-2020 judicially including the opportunity of being heard.

For Appellant in all W.As.	:	Mr.S.Karunakar
For Respondent in all W.As.	:	Mrs.J.Padmavathi Devi Special Government Pleader

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COMMON JUDGMENT

(Judgment of the Court was made by **M.M.SUNDRESH, J.)**

The only issue involved in all these appeals is with respect to the conditional order issued by the learned Single Judge, while remitting the matter back to the Assessing Officer by setting aside the order of assessment, on the ground of not giving adequate time for giving the reply.

2. The learned Counsel appearing for the appellant submitted that having remitted the matter, there is no question of passing a conditional order, asking the appellant to make the payment.

3 The learned Special Government Pleader appearing for the respondent submitted that though sufficient opportunities have been given, the order of the learned Single Judge is not appealed by the Revenue, as it was only a remittal order. The learned Single Judge by taking into consideration the relevant materials and the fact that the writ petitions having been filed, without exhausting the alternative statutory appeal remedy, passed a conditional order, directing the appellant to pay only a part amount. She has also relied on the judgment of the Division Bench of this Court, in ***W.A.Nos.177 of 2019, etc., batch, dated 28.01.2019***, in ***M/s.Bhuvaneswari Tyres v. Commercial Tax Officer, Gudiyatham, Vellore***, with specific reference to the following paragraph:-

> *''4.We have gone through the common order passed by the learned Single Judge and we find that the learned Single Judge rightly protected the interests of the assessee. But at the same time, with a view to safeguard the interests of the Revenue, the learned Single Judge imposed a condition directing the assessee to pay 15% of the tax liability and then file their reply*

against the proposal made by the Department. We also find that the order passed by the learned Single Judge is reasonable and grants substantial relief to the assesse. Hence, the assessee has not made out any grounds to interfere with the common order passed by the learned Single Judge in the said writ petitions.''

4. We do not find any merit in these writ appeals. The appellant ought to have filed statutory appeal at the first instance. Be that as it may, the orders passed by the learned Single Judge with respect to remanding the matters have not been challenged. The learned Single Judge has only directed the appellant to pay a very small amount, out of the demand raised. Considering the similar issue, a Division Bench of this Court (cited supra) has also held that such an order passed by the Court at the first instance, exercising its jurisdiction, is not liable to be interfered with.

5. In such view of the matter, these writ appeals stand dismissed. However, time is extended by a period of four weeks from the date of receipt of a copy of this judgment, enabling the appellant to comply with the order of the learned Single Judge. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The State Tax Officer (Inspection),
Intelligence Wing,Tirunelveli.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-14201[F] dated 29/03/2021)
+1 CC to M/s.SPL GP (SR-14377[F] dated 30/03/2021)

W.A.(MD)Nos.613 to 615 of 2021
and C.M.P.(MD)Nos.2775, 2776 and 2778 of 2021

MJ(CO)
TR(28.04.2021) 3P 4C