IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.6075 & 6077 of 2022
and
W.M.P.Nos.6155, 6156, 6157 & 6158 of 2022

Tvl.Easwaran Aadhi Constructions,
Rep by its Proprietor - S.Easwaran
...Petitioner in both W.P's

-Vs-

The State Tax Officer,
Dharapuram,
Tirupur District. ...Respondent in both W.P's

Prayer in W.P.No.6075 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorai calling for the records on the file of the respondent in its impugned proceedings made in TIN: 33963022811/2015-16 dated 15.03.2021 and quash the same.

Prayer in W.P.No.6077 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorai calling for the records on the file of the respondent in its impugned proceedings made in TIN: 33963022811/2016-17 dated 15.03.2021 and quash the same.

In both W.P's

For Petitioner : Mr. S.Rajasekar

For Respondent : Mr. C.Harsha Raj,
Additional Government Pleader

COMMON O R D E R

The prayer sought for herein is for a Writ of Certiorai calling for the records on the file of the respondent in its impugned proceedings made in TIN: 33963022811/2015-16 and TIN:

33963022811/2016-17 dated 15.03.2021 dated 15.03.2021 and quash the same.

2. The issue raised in both the writ petitions is one and the same. Hence, with the consent of the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent, both the writ petitions were taken up together and are disposed of by this common order.

3.That in respect of the assessment year 2015-16 and 2016-17 notice for revised assessment under the erstwhile TNVAT Act, 2006 was issued by the Revenue on 24.02.2021 and 25.02.2021.

4.In the said notice, time was given upto 05.03.2021 before which the petitioner was directed to appear on any date for giving their defense/input etc., However, due to communication gap as the said Show Cause notice was received by the lower level staff of the petitioner, it could not reach the concerned person of the petitioner assessee in time. Therefore, they missed the time i.e before 05.03.2021 to appear before the respondent.

5.It is the further case of the petitioner that insofar as the reasons stated in the Show Cause notice, the certificate in Form S under Rule 92 is already available with the petitioner and if that is produced before the Revenue, they could have taken a view than the one now passed by the impugned order dated 15.03.2021.

6.However, without canvassing the said merits of the case, the learned counsel for the petitioner submits that because only ten days time between the Show Cause notice and the date fixed for replying to the Show Cause notice, was there, within the said ten days time since the petitioner could not appear before the Revenue due to the communication gap as indicated above, the orders impugned were passed on 15.03.2021. Therefore, by that, the learned counsel for the petitioner seeks before this Court to give one more opportunity as last and final opportunity to the petitioner and if such opportunity is given, the petitioner would, without fail, appear before the Revenue and file the documents including the Certificate in Form S and put forth the case.

7.I have heard the learned Additional Government Pleader appearing for the respondent who would submit that, the order itself was passed on 15.03.2021 and after almost a year, it is being challenged. Therefore, there is a delay of one year within which time no appeal has been filed. Hence, this Writ Petition, on that ground is liable to be rejected.

8.He also submitted that the reasons stated by the learned counsel for the petitioner for not appearing or not responding to the Show Cause notice issued by the Revenue within the time that allegedly there was a communication gap cannot be countenanced because, once a notice is served, the duty of the respondent assessee is to appear and put forth the case. Therefore, this case cannot be treated as a case where proper opportunity has not been given to the petitioner assessee. Therefore, on that ground, the impugned order cannot be assailed successfully by the learned counsel for the petitioner before this Court.

9.I have considered the said rival submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and have perused the materials placed before this Court.

10.Insofar as the merits of the case is concerned, this Court is not inclined to delve into that matter. It is a matter to be decided if at all any appeal is filed before the Appellate Authority.

11.However, now, it is a plea made by the petitioner counsel that within the ten days time, which was given to the petitioner to reply, due to communication gap, the concerned person of the petitioner dealer could not appear before the authority. Therefore, he seeks only one opportunity as final opportunity so that, he can appear before the Revenue and put forth his case.

12.Considering the said plea made by the petitioner side and taking into account the factual matrix of the case, this Court is inclined to dispose of these Writ Petitions with the following orders:

- That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While considering the same, a Show Cause notice a fresh can be given by the Respondent Revenue to the petitioner fixing a date within two weeks period and on the said date, the petitioner shall appear with relevant documents to put forth his case before the concerned authority of the Revenue without fail.

- It is made clear that, if the petitioner has not utilised the said final chance to be given in this regard as indicated above, it is open to the Revenue to proceed further and to confirm the order impugned or to pass orders on merits and in accordance with law.

13. With the above observations and directions, these writ

petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ANU/KST

To

The State Tax Officer,
Dharapuram,
Tirupur District.

+1cc to R.Hemalatha, Advocate, S.R.No.18405

+1cc to the Special Government Pleader, (Tax) S.R.No.18301

W.P.No.6075 & 6077 of 2022

MT(CO)
RGA(28/04/2022)