IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.2078 of 2018
and
CMP.No.16358 of 2018

M/s. Thirumurugan Traders,
Rep. by its Proprietrix, M.Kasthuri,
No.4/177, Naachanapatti H,
Thottambatty Post, Harur – 636 903,
Dharmapuri. .. Appellant

Versus

1.The Commercial Tax Officer,
Group VII Enforcement (North),
Greams Road,
Chennai – 600 006.

2.The Joint Commissioner (CT),
Enforcement – I,
Chennai.

3.The State Tax Officer,
Harur Assessment Circle,
Harur. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P. No. 9907 of 2018 dated 20.04.2018 and for setting aside the portion of the order relating to the condition imposed to pay a 25% of the disputed tax within four weeks.

For Appellant	:	No appearance
For Respondents	:	Mr. Richard Wilson Additional Government Pleader (Taxes)

JUDGMENT

(Judgment of the Court was delivered by **R. MAHADEVAN, J.**)

The appellant is a dealer in edible oils and an assessee on the file of the third respondent under the provisions of the Tamil Nadu Value Added Tax Act and the Central Sales Tax Act. While so, the first respondent conducted a surprise inspection, during the course of which, it was found that there was a suppression of sales in respect of sunflower oil and rice bran oil for the assessment year 2011-2012. Questioning the jurisdiction of the authority concerned to conduct such inspection, the appellant filed WP.No.17734 of 2014, which was disposed of by this court, by order dated 26.07.2016, leaving the issue relating to jurisdiction open to be canvassed by them, as and when notice is issued by the assessing officer. Subsequently, the third respondent issued a revision notice dated 15.11.2016, which was challenged by the appellant by filing W.P.No.16343 of 2017 on the strength of the liberty granted in the earlier writ petition in WP.No.17734 of 2014. This Court, by order dated 29.06.2017 dismissed the said writ petition by granting liberty to the appellant to file their objections to the notice dated 15.11.2016, within a period of four weeks and directing the assessing officer to pass an assessment order, after considering the said objections and granting an opportunity of personal hearing to the appellant. However, the appellant did not file their objection nor appeared for personal hearing granted by the assessing officer. Therefore, based on the available materials, the third respondent passed the assessment order on 28.03.2018, which was put to challenge by the appellant in WP.No.9907 of 2018.

2.The learned Judge, by order dated 20.04.2018, disposed of the said writ petition in WP.No.9907 of 2018, in the following terms:

> *"6. Accordingly, this writ petition is disposed of by directing the petitioner to pay 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. If the same is paid, then the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit objections within a period of seven days' therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment. If the petitioner fails to comply with the condition within the time permitted, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed without further reference to this Court and the respondent is at liberty to recover tax and penalty. No costs. Consequently, connected miscellaneous petition is closed."*

Aggrieved over the direction issued by the learned Judge in paying 25% of the disputed tax, the appellant has come up with this writ appeal.

3.On 10.02.2022, when the matter was taken up for consideration, the learned counsel for the appellant sought a short accommodation for production of the receipt for effecting payment of 25% of the disputed tax. However, no receipt was produced till date.

4.On the other hand, the learned Additional Government Pleader (Taxes) appearing for the respondents submitted that the appellant has not complied with the order passed by the learned Judge to pay 25% of the tax due and hence, they are not entitled for any relief in this appeal.

5.There is no representation for the appellant. Heard the learned Additional Government Pleader (Taxes) appearing for the respondents and also perused the materials available on record.

6.The appellant questioned the order of the learned Judge passed in the writ petition only in respect of directing them to pay 25% of the disputed tax, by stating that once the respondent / assessing officer was directed to pass orders afresh, after providing an opportunity of hearing to the appellant / assessee, there is no justification in giving such a direction of making deposit of 25% of the tax amount. According to the appellant, the question of making payment / deposit of the disputed tax in full / part, would arise, only after fresh assessment is made, whereas it is the submission on the side of the respondents that there is no illegality or infirmity in the order so passed by the learned Judge, warranting interference at the hands of this court.

7.It could be seen from the order impugned herein that the learned Judge, while disposing of the writ petition, has observed that there is a possibility that the matter will be remitted to the assessing officer for fresh consideration, in the event of the appellant being filed an appeal before the appellate authority; and therefore, a last chance was provided to the appellant to file their objections, treating the exparte assessment order as show cause notice, subject to deposit of 25% of the disputed tax, within a period of four weeks, failing which, this order would stand cancelled automatically without further reference to this court.

8.Admittedly, the appellant did not pay 25% of the disputed tax, within the time stipulated by the learned Judge. Instead of complying with the said direction, they have come to this court with this writ appeal. It is to be noted that in paragraph 2 of the order impugned herein, the learned Judge has specifically pointed out that the appellant failed to file objections to the revision notice dated 15.11.2017 thereby disobeying the order passed by this court in WP.No.16343 of 2017, but repeatedly was taking adjournments before the assessing officer and after waiting for several months, the assessing officer has completed the assessment by passing exparte assessment order dated 28.03.2018 and hence, there was absolutely no error in the order passed by the assessing officer, as the appellant has adopted dilatory tactics.

9.Having regard to such conduct of the appellant and also taking into consideration the interest of revenue, the learned Judge while disposing the writ petition, imposed the condition of paying 25% of the disputed tax on the appellant. The said condition also, has not been complied with by them, till date. Therefore, the appellant, being the defaulter in complying with the directions issued by the learned Judge, cannot seek any indulgence of this court.

10.In such view of the matter, this writ appeal fails and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [J.S.N.P., J.]
03.03.2022

Internet : Yes / No
Index : Yes / No
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