IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.27949 of 2015
and M.P.No.1 of 2015

M/s. Shanmugasundaram Agency,
Rep. By its Authorised Signatory, Mrs. K.Prema,
No.757 Chitoor Main Road,Panruti ... Petitioner

Versus

The Commercial Tax Officer,
Panruti (Rural) Assessment Circle,
Panruti .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Certiorari, to call for the records of the respondent in TIN 33324500764/2013-14 and quash the impugned proceedings dated 30.04.2015.

For Petitioner : Mr. V.Sundareswaran
For Respondent : Mr. Manokara Sundaram, AGP.,

O R D E R

Heard Mr. V.Sundareswaran, learned counsel appearing for the petitioner and Mr. Manokara Sundaram, learned Additional Government Pleader, appearing for the respondent. By consent of the learned counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax, 2006, has challenged the order of assessment passed by the respondent, which is a revision of assessment, for the year 2013-14.

3. The learned counsel appearing for the petitioner made vehement submissions contending that the respondent misdirected himself and fell in error in resorting to 'best judgment assessment' for non-filing of Form-WW and the Assessing Officer failed to peruse the books of accounts and also the returns and therefore, the impugned assessment order calls for interference; that apart, the imposition of penalty is also totally not warranted.

4. A counter affidavit has been filed by the respondent setting-out the factual position and justifying the impugned assessment order.

5. However, this Court does not propose to go into the merits of the assessment, for a simple reason that the petitioner, which is a registered dealer on the file of the respondent, failed to respond to the Revision Notice, dated 23.02.2015. The petitioner did not file their objections and therefore, the respondent was well within his jurisdiction to proceed with the assessment on the ground that the petitioner has No Objection to state anything as against the revision notice. It is not as if the petitioner is a small time trader, but it is a registered dealer carrying on business in petrol, diesel and lubricants and periodically filing the returns. Further more, in the affidavit filed in support of this writ petition, there is no reason given by the petitioner as to why they did not file their objections. That apart, if the petitioner is aggrieved by the impugned order, the petitioner should have preferred an appeal, as against the impugned order. But, it has not availed the alternative remedy and no reason has been stated in the affidavit filed in support of this writ petition as to why the petitioner has by-passed the appellate remedy and why this Court should exercise the extraordinary jurisdiction under Article 226 of the Constitution of India.

6. It is not the case of violation of principles of natural justice but a case of deliberate non-availing of the opportunity granted to the petitioner. The petitioner had sufficient time to submit their objections to the pre-revision notice, dated 23.02.2015 and the impugned order was passed only after two months and the impugned order was challenged by the petitioner only in September 2015.

7. In the light of the above, this Court is not inclined to exercise its jurisdiction, to interfere with the impugned order, at this juncture and the petitioner is relegated to avail the appeal remedy provided under the statute. Considering the fact that this writ petition was pending from September 2015 and an order of interim stay was initially granted for a period of two weeks and not subsequently extended, this Court is inclined to grant time to the petitioner to file the appeal, as against the impugned order. Accordingly, this writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to file an appeal before the appellate authority and if the appeal is filed within a period of thirty days from the date of receipt of a copy of this order, the Appellate Authority shall

entertain the appeal without reference to the period of limitation prescribed under the statute. No costs. Consequently, the connected WMP is closed.

srk

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Note to office.:

Registry is directed to return the original impugned order to the learned counsel for the petitioner, after obtaining necessary endorsement in the Court bundle.

To

The Commercial Tax Officer,
Panruti (Rural) Assessment Circle,
Panruti

+1 cc to Mr.V.sundreswaran, Advocate SR 37096

nr(co)
prk19/7

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