IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21956 of 2016 & WMP.No.18784 of 2016

M/s.Carboline (India) Pvt.Ltd.,
rep.by Authorized Signatory,
Ambattur, Chennai-98 ...Petitioner

Vs

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Villivakkam, Chennai-49. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the impugned order of re-assessment in TIN 33731363995/2012-13 dated 9.6.2016 under the Tamil Nadu Value Added Tax Act, 2006 from the files of the respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar
For Respondent : Mr.Manohar Sundaram, AGP

ORDER

Mr.Manohar Sundaram, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order of assessment for the year 2012-13 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the Act). The petitioner, which is a private limited company, is registered as a dealer under the provisions of the Act as well as the Central Sales Act, 1956 (hereinafter called the CST Act) on the file of the respondent. The petitioner is engaged in paints and enamel colour.

3. Learned counsel for the petitioner submitted that though the petitioner did not submit their objections to the pre-assessment notice, which was issued by the respondent on 27.1.2016, the petitioner was diligently following up the matter arising under the CST Act, 1956, which is now pending consideration before the Joint Commissioner (CT), Chennai in a

revision application filed by the petitioner on 7.6.2016. Therefore, the petitioner would state that had the respondent issued another notice before passing the impugned order, the petitioner would have filed their objections within time.

4. In my view, the explanation given for non submitting the objections despite long lapse of time is not convincing. Therefore, it is not a case of denial of opportunity, but it is a case where the petitioner failed to utilize the opportunity granted by the respondent. However, since the impugned proceedings appears to be an ex parte proceedings and the petitioner states that they have got a good case before the Assessing Officer, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a payment condition.

5. In the light of the above, the writ petition is disposed of with a direction to the petitioner to pay 15% of the tax determined in the impugned proceedings dated 9.6.2016 within a period of three weeks from the date of receipt of a copy of this order. The petitioner will be entitled to treat the impugned proceedings as a show cause notice and submit their objections to the same, while tendering payment of 15% of the tax determined. However, if the petitioner does not exercise this option, it is always open to the respondent to proceed further in accordance with law. In the event of the petitioner complying with the above condition and submitting their objections within time, the respondent shall grant an opportunity of personal hearing to the petitioner and proceed to complete the assessment under the provisions of the Act. Since this Court directed the impugned notice to be treated as a show cause notice subject to payment of 15% of the tax determined, the question of enforcing the demand under other heads does not arise and the same shall be kept in abeyance till orders are passed by the respondent. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Villivakkam, Chennai-49.

+1 cc to Mr.Aparna Nandakumar, Advocate Sr.35802
+1 cc to Special Government Pleader Sr.35928

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WMP.No.18784 of 2016

PVS(CO)
EU 22.07.16