IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.33189 of 2016
WMP Nos.28711 & 28712 of 2016

Tvl.Selvi stores,
Rep.by its Proprietor,
No.55-B, Plot No.3, Gandhi Nagar P.O.
Kurinjipadi. ..Petitioner

Vs

The Commercial Tax Officer,
Panruti. .. Respondent

Writ petition filed under Article 226 of the Constitution of India to iisue a Writ of Certiorarified Mandamus or any other appropriate writ calling for the records of the respondent in TIN 33684501342/2013-2014 dated 11.03.2015 and quash the same as illegal and unconstitutional and further direct the respondent to issue fresh notices to the petitioner firm and to pass a fresh order of assessment in accordance with law after affording an opportunity of personal hearing as prescribed under the Act.

For Petitioner : Mr.A.Ravichandran
For Respondent : Mr.K.Venkatesh
Government Advocate [T]

ORDER

Heard Mr.A.Ravichandran, learned counsel appearing for the petitioner, and Mr.K.Venkatesh, Government Advocate [Taxes] accepting notice for the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 In this writ petition, the petitioner, who is a registered dealer on the file of the respondent, challenges the order of assessment dated 11.03.2015 under the provisions of the the Tamil Nadu Value Added Tax Act, 2006. The belatedly filed returns by the petitioner were examined and a proposal was made by the respondent by issuing a show cause notice to revise the total and taxable turnover. The petitioner received the notice and did not file any objection and therefore, the proposal in

the notice was confirmed. Even thereafter, the petitioner did not take any steps immediately and has now, rushed to this court only after a demand notice has been issued to the petitioner. The contention raised by the petitioner that the show cause notice was not served on them, cannot be accepted since there is no proof or materials produced by the petitioner to the satisfaction of this Court that the notice was not served on the them. However, it is seen that impugned assessment order has been completed ex-parte, no doubt, on account of the default of the petitioner. However, this court is inclined to grant one more opportunity to the petitioner to put forth its objection, subject to certain conditions.

3 Accordingly, there will be a direction to the petitioner to pay 15% of the disputed tax within a period of three weeks from the date of receipt of a copy of this order and if they do so, the petitioner is entitled to treat the impugned proceedings as a show cause notice, sbmit its objection within a period of two weeks thereafter, after which the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. If the petitioner fails to comply with the above conditional order within the time permitted, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed, leaving it open to the petitioner to work out its remedies under the provisions of the Tamil Nadu Value Added Tax Act, 2006. As this Court has granted liberty to treat the impugned proceedings as show cause notice, till the assessment is re-done, on the petitioner complying the conditional order, no coercive action shall be initiated against the petitioner for recovery of tax and penalty assessed.

4 The writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

The Commercial Tax Officer,
Panruti.

1 cc to Mr.A.Ravichandran, Advocate, sr.54106
1 cc to Special Government Pleader (Taxes), sr.54051

WP.No.33189 of 2016

trm co
kra 29.09.2016