IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.35650 & 35651 of 2016
and WMP.Nos.30640 & 30641 of 2016

Tvl.Venus Energy,
Rep by its Proprietor,
K.Sumathi,
3/CD Complex,
Gandhi Nagar Post,
Panruti. .. Petitioner in both WPs

Vs

The Commercial Tax Officer,
Panruti Assessment Circle [Rural],
Panruti. .. Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33734501169/2013-14 dated 21.03.2016 and TIN 33734501169/2014-15 dated 10.03.2016 respectively and quash the same.

For Petitioner in both WPs : Ms.S.Benazir

For Respondent : Mr.K.Venkatesh, GA in both WPs

C O M M O N O R D E R

Heard Ms.S.Benazir, learned counsel for the petitioner; Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent and with the consent on either side, the Writ Petitions are taken up for disposal.

2. The petitioner is a dealer in machinery and IT products and an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [herein after referred to as “the Act”]. In these Writ Petitions, the petitioner has challenged the orders of assessment under the Act for the Assessment Years 2013-14 and 2014-15.

3. Learned counsel for the petitioner submitted that the impugned order is erroneous, since the respondent has levied tax for the labour invoice, considering it as a sale and stated that the sale has not been disclosed by the petitioner. It is therefore, submitted that the Assessment Orders warrant interference.

4. However, on perusal of the impugned orders, it is seen that the petitioner did not respond to the Pre-Assessment Notices, did not submit their objections and did not appear for personal hearing, which was afforded to the petitioner. Therefore, the respondent waited for almost three months, confirmed the proposal in the notice. The manner in which the assessment has been completed by the respondent, cannot be faulted, as the petitioner failed to avail the opportunity provided by the respondent.

5. Learned counsel for the petitioner pleads that the petitioner has an excellent case and if one opportunity is granted, the petitioner will appear before the respondent and produce necessary documents to prove that no tax was leviable, since it is a labour invoice.

6. Considering the facts and circumstances of the case, this Court is inclined to afford an opportunity to the petitioner to go back to the Assessing Officer, but the same will be subject to certain conditions. Accordingly, the petitioner is directed to pay 15% of the disputed tax for both the Assessment Years 2013-14 and 2014-15, within a period of three weeks from the date of receipt of a copy of this order. If this payment is effected within the time permitted, then the petitioner will be entitled to treat the impugned proceedings as show cause notices and submit their objections within a period of 15 days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, verify the documents that the petitioner may produce and re-do the assessment. If the petitioner complies with the above condition, the respondent shall not initiate coercive action for recovery of balance amount of tax penalty as quantified in the impugned Assessment Orders. Upon failure on the part of the petitioner to comply with the condition imposed by this Court within the time permitted, the benefit of this order will not inure the petitioner and the Writ Petition would stand automatically dismissed, without any further reference to this Court, leaving it open to the petitioner to workout the remedies in accordance with law.

With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

gya

To

The Commercial Tax Officer,
Panruti Assessment Circle [Rural],
Panruti.

1 cc to Special Government Pleader, Sr. 57734
1 cc to M/s.S. Benazir, Advocate, Sr. 57486

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