In the High Court of Judicature at Madras

Dated : 02.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.37960 of 2016 & WMP.No.32555 of 2016

M/s.Palani Auto Center, rep.
by its Proprietor Mr.V.Palani ...Petitioner

Vs

The Commercial Tax Officer,
Gingee Assessment Circle,
Gingee. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN 33774741707/2014-2015 and quash the order dated 31.8.2016 as passed without considering the complete and correct returns filed by the petitioner under Section 22(6)(a) of the Tamil Nadu Value Added Tax Act and also overlooking the directions given by the Madras High Court in W.P.No.11357 of 2016 filed by the petitioner.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the assessment order dated 31.8.2016 for the year 2014-15.

3. This is the second time the petitioner is before this Court for the very same assessment year. Earlier, an order of assessment was passed on 15.10.2015 for the same year i.e. 2014-15 under the provisions of the said Act. The said assessment was pursuant to a pre-revision notice dated 31.8.2015. The Assessing Officer examined the manual returns filed belatedly and

confirmed the proposal in the notice dated 31.8.2015. Questioning the same, the petitioner filed a writ petition in W.P.No.11357 of 2016 i.e. after a demand notice was issued to the petitioner. The said writ petition was disposed of on 28.3.2016.

4. On perusal of the order dated 28.3.2016 in the said writ petition, it appears that this Court was convinced with the petitioner's case that there had been a violation of the principles of natural justice, as the revision of assessment was made under Section 22(4) of the said Act without affording an opportunity of personal hearing. Therefore, to afford an opportunity of personal hearing, the assessment order dated 15.10.2015 was set aside and the matter was remitted back to the respondent to be decided afresh.

5. Pursuant to that, the respondent issued a fresh notice dated 30.6.2016 clearly setting out as to what is the proposal, for which, the petitioner submitted a reply on 14.7.2016. After considering the reply and affording an opportunity of personal hearing, the respondent passed the impugned order.

6. The learned counsel for the petitioner has contended that the respondent ought to have considered the manual returns filed by the petitioner, as they were correct and complete for the year 2014-15.

7. In my view, the respondent assigned certain reasons for not accepting the petitioner's contentions. The reasons assigned revolve around the factual issues, which have to be agitated by the petitioner by resorting to remedies available under the said Act as against the impugned order. Whether the return, which was filed belatedly relevant to the assessment year 2014-15, could be accepted or not, is a matter to be decided by the Assessing Officer. If the petitioner is dissatisfied with the order passed by the Assessing Officer, then they have to file an appeal before the Appellate Authority and there is no justification for the petitioner to bypass such an appeal remedy, which is not only efficacious, but also effective. Thus, in the absence of any technical grounds, on which, the impugned order can be interfered with in a writ petition, this Court is not inclined to entertain the writ petition.

8. Accordingly, the writ petition is dismissed as not maintainable. No costs. Consequently, the above WMP is also dismissed.

9. However, it is open to the petitioner to file an appeal before the Appellate Authority.

10. After the above order is dictated, the learned counsel for the petitioner submits that the petitioner may be permitted to go before the Appellate Authority for filing an appeal and sometime may be granted.

11. Though there is sufficient time for the petitioner to file an appeal, this Court grants 30 days' time from the date of receipt of a copy of this order, to file an appeal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Gingee Assessment Circle, Gingee.

2.Despatch Wing,
C.O Department,

+1cc to M/S.P.Rajkumar, Advocate sr.62042
+1cc to the Special Government Pleader Sr.62656

WP.No.37960 of 2016&
WMP.No.32555 of 2016

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srg 25/11/2016