In the High Court of Judicature at Madras

Dated : 03.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.38140 of 2016 & WMP.No.32680 of 2016

M/s.United Cooling Systems Pvt. Ltd., rep.by its Director V.Krishnavelu ...Petitioner

Vs

The Commercial Tax Officer, Podanur Assessment Circle, Coimbatore-18. Coimbatore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33071801149/2014-15 dated 2.3.2016 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is engaged in the manufacture of cooling towers and heat exchangers and is an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In this writ petition, the petitioner has challenged the order of assessment dated 2.3.2016.

3. Though the petitioner was served with the pre-revision notice and was granted sufficient time to submit their objections, they failed to respond to the pre-revision notice, which has ultimately resulted in the impugned order of assessment. Since the petitioner did not avail the opportunity granted to them, the respondent - Assessing Officer cannot be faulted for having completed the assessment ex parte by confirming the proposal in the notice dated 22.1.2016.

4. The learned counsel for the petitioner would submit that the petitioner has a good case on merits and that if one more opportunity is granted, they will be in a position to establish before the Assessing Officer that the assessment need not be revised.

5. As noticed above, the petitioner was not diligent enough to avail the opportunity provided to them and therefore, they cannot claim that there is a violation of the principles of natural justice. Rather, it is a case where the they failed to avail the opportunity. This is sufficient to non suit the petitioner. However, considering the fact that though the impugned order was passed in March 2016, till date, the tax and penalty have not been recovered, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer, subject to a condition.

6. In view of the above, the writ petition is disposed with a direction to the petitioner to pay 15% of the disputed tax before the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, an opportunity of personal hearing shall be granted to the petitioner and the assessment shall be redone in accordance with law. In case of any default in payment, this order will not enure to the benefit of the petitioner and the writ petition will stand automatically dismissed without any further reference to this Court. No costs. Consequently, the above WMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Commercial Tax Officer, Podanur Assessment Circle,
Coimbatore-18.
Coimbatore District.

+1 cc to Mrs.R.Hemalatha Advocate sr 62427
+1 cc to Special Government Pleader Taxes sr 62652

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