In the High Court of Judicature at Madras

Dated : 23.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41104 of 2016 & WMP.No.35099 of 2016

Jupiter Leather Export, rep.by
its Proprietor K.Sundaresan ...Petitioner

Vs

The Commercial Tax Officer,
Ranipet SIPCOT. ...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 files of the respondent herein in TIN 33104363921/2015-16 dated 29.6.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan

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 has challenged an order of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3.Though the learned counsel for the petitioner has strenuously contended that the impugned order is without jurisdiction, it is seen that for the pre-assessment notice dated 24.3.2016, the petitioner did not give any objections. This has been specifically recorded by the Assessing Officer. In the absence of any details to the contra, no error can be attributed to the respondent for passing the impugned order and mere furnishing of returns, by itself, will not be sufficient, when the Assessing Officer proposed to reverse the total and taxable turnover.

4. The other contention raised by the learned counsel for the petitioner is that it is not known as to whether it is an order of provisional assessment.

5. Since the respondent referred to the period upto June 2016, this also should have been objected to by the petitioner after receiving the pre-assessment notice. Having failed to do so, the petitioner is not justified in contending that the impugned order is in violation of the principles of natural justice. Rather, it is a case where an opportunity granted to the petitioner has not been utilized.

6. However, considering the fact that the petitioner has been filing the returns periodically and they state that they have got sufficient records to prove that the allegation of sales suppression is without any basis, this Court is inclined to grant one more opportunity to the petitioner subject to certain conditions.

7.Accordingly, the writ petition is disposed of with 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. If the same is paid, the petitioner is entitled to treat the impugned proceedings as a show cause notice and submit their objections within 15 days therefrom. On receipt of the objections, the respondent shall verify the returns, books of accounts and all the documents, which the petitioner will produce and redo the assessment in accordance with law. On the petitioner complying with the condition of payment of 15% of the disputed tax, the respondent shall not demand the balance amount of tax and penalty as quantified in the impugned assessment order, since this Court has directed the proceedings to be treated as a show cause notice. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer,
Ranipet SIPCOT.

+1cc to Mr.N.Inbarajan, Advocate Sr.67970
+2cc to the Special Government Pleader 69603,68290

WP.No.41104 of 2016&
WMP.No.35099 of 2016

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srg 10/12/2016