IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.41465 & 41466 of 2016 &

WMP Nos.35443 & 35446 of 2016

M/s Ganesh Essence Mart
rep. by its Proprietor -V.S.Anandan
.. Petitioner in both petitions

..Vs..

Assistant Commissioner (CT) (FAC)
Cuddalore (Town) Circle
Cuddalore, Cuddalore District. .. Respondent in both petitions

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33504381840/2014-15 dated 30.3.2016 & 17.05.2016.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.S.Kanmani Annamalai
Addl. Government Pleader

C O M M O N O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent. By consent, the Writ Petitions are taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] on the file of the respondent and these Writ Petitions have been filed challenging the orders of assessment for the year 2014-15 dated 30.03.2016 and 17.5.2016.

3.Essentially the respondent issued pre-revision notices dated 08.01.2016 and 05.05.2016, by culling out the details from the intra net Web Site of the Department, and stated there was mismatch due to purchase suppression and arrived the sales suppression. Though the petitioner received the pre-revision notices dated 08.01.2016 and 05.05.2016, they were not diligent enough to submit any reply. Therefore, on this ground alone, the Writ Petitions can be rejected.

4.The learned counsel for the petitioner submitted that one more opportunity could be granted to the petitioner to appear before the respondent, since they have sufficient records to prove that the transactions done by them are proper and legal.

5.In the Pre-Revision Notice dated 08.1.2016, the details of the names of other end dealers along with their TIN Numbers, Invoice Nos, Invoice date, Commodity Code, etc. have been comprehensively furnished. Therefore, if the petitioner dispute the correctness of the same, they should appear before the Assessing Officer and furnish documents to prove that there is no ground for reversing the ITC availed by them. Having failed to do so, the petitioner cannot complain that there is violation principles of natural justice. However, considering the fact that the tax though quantified could not be recovered by the office and both the impugned assessment orders remain as such purely for statistical purposes, this Court is inclined to remit the matter to the respondent/Assistant Commissioner, subject to certain conditions.

7.Accordingly, while holding that the Writ Petitions are not maintainable, petitioner is directed to pay 15% of the disputed tax as computed in the orders of assessment dated 30.03.2016 and 17.05.2016, within a period of three weeks from the date of receipt of a copy of this order and file an Appeal before the Appellate Authority namely the Deputy Commissioner, and the Appellate Authority shall entertain the Appeal without reference to limitation. The petitioner will be entitled to produce records to substantiate their plea and the Appellate Authority shall consider the documents placed by the petitioner and take a decision on the Appeal Petition, on merits and in accordance with law.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

Assistant Commissioner (CT) (FAC)
Cuddalore (Town) Circle
Cuddalore, Cuddalore District.

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.68944
+1cc to the Spl.Government Pleader, S.R.No.69230

sr(CO)
md(29/12/2016)

W.P.Nos.41465 & 41466 of 2016