In the High Court of Judicature at Madras

Dated : 29.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41788 of 2016 & WMP.Nos.35771 & 35772 of 2016

M/s.Senthil Andavar Pipe,
rep.by its Proprietor A.Rajesh ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Thirukoilur, Villupuram 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.33824762292/2011-12 dated 29.5.2015 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 a registered dealer on the file of the respondent

under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In this writ petition, the petitioner challenges the order of assessment dated 29.5.2015 for the year 2011-12 on the ground that adequate opportunity was not granted to the petitioner.

3. It is seen that the pre-assessment notice dated 10.3.2015 was served on the petitioner. In the said notice, there was a proposal to revise the taxable turnover of the petitioner on the ground of mismatch between the sale and purchases effected by the petitioner, the list of such transactions was also appended to the notice dated 10.3.2015. Though the petitioner received the notice, they did not file any reply and therefore, the respondent confirmed the proposal in the notice. This is being challenged in this writ petition. Thus, it is evident that the petitioner, having not availed the opportunity extended to them, cannot complain that there is a violation of the principles of natural justice.

4. However, taking into consideration the fact that the proposal in the show cause notice was based on the web report/mismatch, this Court is of the considered view that one more opportunity can be granted to the petitioner subject to a condition.

5. 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. On such payment, the petitioner is entitled treat the impugned order as a show cause notice and file their objections within two weeks therefrom. On filing of such objections, the respondent shall afford an opportunity of personal hearing to the petitioner 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 tax amount and penalty as quantified in the impugned assessment order, since this Court has directed the proceedings to be treated as a show cause notice. It is made clear that this order will not enure to the benefit of the petitioner if the petitioner fails to make payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, the above WMPs are closed.

29.11.2016

Internet : Yes

To
The Deputy Commercial Tax Officer, Thirukoilur, Villupuram District.

RS

T.S.SIVAGNANAM,J

RS

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