In the High Court of Judicature at Madras

Dated : 30.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.42003 of 2016 &

WMP.Nos.35947 & 35948 of 2016

M/s.Babu Agency, rep.by its
Proprietor V.Babu ...Petitioner

Vs

The Commercial Tax Officer,
Gudiyatham (East), Gudiyatham,
Vellore 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 proceedings in TIN: 33094240494/2013-14 dated 14.10.2016 and quash the same.

For Petitioner : Mr.S.Rajasekar
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 and is doing business in cement, tiles, sanitary wares and paints at Gudiyatham. In this writ petition, the petitioner has challenged an order of assessment passed by the respondent for the year 2013-14.

3. The respondent issued a notice stating that on verification of Form I returns filed by the petitioner with the web report, it was found that there was a mismatch of the purchases effected by the petitioner for the year 2013-14. The details of the mismatch have also been enclosed along with the notice. Though the petitioner received the notice, they did not

care to file any objections within the time permitted. Now, the petitioner is before this Court stating that the impugned order has been passed in violation of the principles of natural justice.

4. The said submission is liable to be out rightly rejected for the reason that the petitioner did not avail the opportunity granted to them to submit their objections. Therefore, it is not a case of violation of the principles of natural justice, but a case where the petitioner blatantly failed to avail the opportunity granted. This is sufficient to reject the writ petition.

5. The learned counsel for the petitioner submits that the petitioner would be in a position to reconcile the defects with regard to the mismatch and prove the genuineness of the transactions and prays one more opportunity to be granted to the petitioner to go before the Assessing Officer.

6. Considering the said submissions made on either side, this Court is inclined to grant an opportunity to the petitioner to go before the Assessing Officer subject to a condition.

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. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer, Gudiyatham (East),
Gudiyatham,Vellore District.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.70811
+1cc to the Spl Government Pleader, S.R.No.70625

lrs(CO)
BB(27/12/2016)

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