IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.30815 of 2017
and
W.M.P.No.33741 of 2017

M/s. Sri Throwbathiamman Traders,
rep. by its Proprietor. ...Petitioner

Vs.

Deputy Commercial Tax Officer,
Tiruvannamalai II Assessment Circle,
Tiruvannamalai District. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent, and to quash the assessment proceedings in TIN No.33654662621/2013-14, dated 30.06.2015, and to direct the respondent to pass fresh orders without relying on the details in the sales tax department Website but verifying the books of accounts of the petitioner after providing an opportunity for personal hearing.

For Petitioner : Mr. C. Baktha Siromoni
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr. C. Baktha Siromoni, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. With the consent on either side, this Writ Petition is taken up for disposal.

2. The petitioner, who is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is aggrieved by an order of assessment for the year 2013-14, dated 30.06.2015.

3. As against the impugned order, the petitioner should have filed an Appeal before the Appellate Commissioner, and without exhausting such remedies, after about two years, the petitioner has approached this Court, by way of this Writ Petition. This would be sufficient to dismiss the Writ Petition in limine. However, the learned counsel appearing for the

petitioner would submit that the petitioner is a small time dealer, and in spite of several requests made by them, vide their objections, dated 28.01.2015, to peruse the books of accounts and the documents, and then, to complete the assessment, the respondent did not give any opportunity to the petitioner, to peruse the books of accounts, but, passed the impugned order, stating that the purchase details in Annexure-I and the balance of Rs.1,47,633/- was not accounted for. It is further submitted that, had the respondent has afforded an opportunity to peruse the books of accounts, the petitioner would have been able to satisfy the Assessing Officer that, there is no case for revision of assessment.

4. Considering the fact that the petitioner is a small time dealer (dealer in cement), this Court is inclined to give one opportunity to the petitioner. This is owing to the fact that, though the respondent has completed the assessment for the year 2015-16, till date, the respondent has not been able to recover the tax from the petitioner. Therefore, this Court is of the view that the matter can be remanded to the respondent for fresh consideration subject to certain conditions.

5. Accordingly, this Writ Petition is disposed of, by directing the petitioner to pay 15% of the disputed tax within a period of 15 days from the date of receipt of a copy of this order. If the petitioner complies with the condition, i.e. by remitting 15% of the disputed tax, then, the petitioner will be entitled to treat the assessment order as show cause notice and submit their objections within a period of 15 days therefrom, and on receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and peruse the books of accounts and redo the assessment in accordance with law. If the petitioner fails to comply with the condition imposed by this Court, i.e., payment of 15% of the disputed tax, then, the benefit of this order will not enure to the petitioner and the Writ Petition shall stand dismissed automatically, without further reference to this Court. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

Deputy Commercial Tax Officer,
Tiruvannamalai II Assessment Circle,
Tiruvannamalai District.

+ 1 cc to M/s. Baktha Siromoni, Advocate SR.84894
+ 1 cc to M/s. the Special Government Pleader Sr.84920

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GMI(CO)
EU(21/12/2017)