IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1300 of 2017
And
W.M.P.No.1212 of 2017

Tvl.Neelan Pharmacy
Represented by its Partner
S.Priyadharshini ... Petitioner

Vs.

The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai – 600 116. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent in TIN/33231386483/2014-15 dated 06.06.2016 and quash the same as arbitrary, illegal.

For Petitioner : Mr.P.R.Kumar
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

1.Issue Notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondent. With the consent of learned counsel for parties, the writ petition is taken up for hearing and final disposal.

2.This writ petition is directed against the order dated 06.06.2016. By virtue of this order, the petitioner has been directed to pay a tax in the sum of Rs.8,61,351/-, after making requisite adjustment for tax already paid and penalty in the sum of Rs.13,16,250/-.

3.The impugned order is pivoted on the allegation that the respondent's enquiry with the selling dealers has made him to come to a conclusion that there is suppression of sales. In particular, the charge levelled against the petitioner is that, purchase turnover when compared to the sales turnover is less than 50%.

4.It is however, brought to my notice that though the petitioner had filed its objections to the notice dated 31.03.2016, the impugned order, records incorrectly that no objections were filed.

5.To be noted, prior to the issuance of the impugned order, a notice dated 31.03.2016 was issued with a proposal to levy tax and penalty.

6.The petitioner has drawn my attention to the objections dated 15.04.2016 filed qua, said notice. My attention was also drawn to the signatures obtained on the Letter Delivery Book to demonstrate service of objections on the respondent's office. Therefore, the assertion in the impugned order that no objections were filed is incorrect.

7.I may however, point out that the objections filed by the petitioner are sketchy and do not answer the charge levelled by the respondent. All that the petitioner says in the objections is that, its purchases during the relevant assessment year i.e., 2014-15 do not exceed Rs.50 Lakhs.

8.The petitioner has further asserted that it had been filing the monthly returns and paying its taxes regularly.

9.Having regard to the overall circumstances, the impugned order is set aside as it clearly ignores the objections filed by the petitioner for whatever they were worth.

10.However, inorder to obviate a situation which may arise, if the petitioner is not given an opportunity to file further objections, on account of the objections being sketchy as indicated above, the petitioner is also given opportunity to file additional objections. However, before the petitioner files additional objections in the matter, the respondent will supply material particulars which form the basis of the notice dated 31.03.2016. The needful will be done by the respondent within two weeks from the date of receipt of a copy of the order. After such step is taken, the petitioner, will be given at least two weeks to respond to the notice and the materials furnished to it. The respondent will, thereafter, afford a personal hearing to the petitioner before passing a fresh order.

11.The writ petition is disposed of in terms of the aforementioned directions. Consequently, connected pending application is closed. No costs.

19.01.2017

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Index: Yes/ No
Internet: Yes/ No

To

The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai – 600 116.

RAJIV SHAKDHER,J.
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