In the High Court of Judicature at Madras

Dated : 13.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24586 of 2017 & WMP.No.25947 of 2017

M/s.Benny Traders,
rep. by its Proprietor ...Petitioner

Vs

The Assistant Commissioner (CT),
Tiruvannamalai Assessment Circle,
Tiruvannamalai. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the assessment proceedings in TIN 33594663042/ 2015-16 dated 14.10.2016 as illegal and direct the respondent to decide the case as per the various decisions of the Madras High Court regarding the mismatch cases taken from the departmental website.

For Petitioner : Mr.C.Bakthasiromani
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 aggrieved by an revised order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner alone has to be blamed because the petitioner did not file their objections to the revision notice dated 20.9.2016 issued by the respondent. Therefore, the respondent cannot be found fault with for confirming the proposal in the revision notice dated 20.9.2016 in the absence of any objections.

4. One more serious mistake committed by the petitioner is that they did not avail the remedies under the said Act against the order of assessment and by now, even if an appeal is filed, it is time barred.

5. According to the learned counsel for the petitioner, the petitioner is a small dealer on ferrous and non ferrous scraps and has paid taxes regularly and merely because the sellers have not paid the taxes, the petitioner is being penalized. It is further submitted that the revision of assessment itself is based upon the alleged mismatch of purchases and sales taken from the departmental website and in this regard, this Court, in the case of J.K.M. Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle, Chennai [reported in (2017) 99 VST 343], has directed the Assessing Officers to evolve a methodology, by which, similar issues can be decided. Therefore, it is submitted that one more opportunity may be granted to the petitioner to go before the Assessing Officer, as the petitioner is in possession of the purchase invoices and proof to show that they paid taxes to the sellers.

6. The learned Government Advocate points out that there is no valid reason for filing this writ petition belatedly, especially after the appeal remedy has become time barred.

7. Considering the peculiar facts and circumstances and taking note of the fact that the petitioner is a small dealer, this Court is inclined to give an opportunity to the petitioner to go before the Assessing Officer, however, subject to a condition.

8. 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. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. In case the petitioner requires certain details about the alleged mismatch and makes a request to the respondent, such details shall be furnished, after which, the petitioner is granted seven days time to submit their objections. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, peruse the documents and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner if the petitioner fails to comply with the condition of payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, the above WMP is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To
The Assistant Commissioner (CT), Tiruvannamalai Assessment Circle,
Tiruvannamalai.

+1 CC to Mr.C.Bakthasiromani Adocate Sr.No.66899

WP.No.24586 of 2017&
WMP.No.25947 of 2017

RJ(CO)
VC (09/10/2017)