IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27685 of 2017
and
W.M.P.No.29636 of 2017

Nandhini Traders
Rep. By its Propritrix
H.Kaleeswari
No.806, Thiruvottiyur High Road,
Chennai - 600 019. ... Petitioner

Vs.

Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
No.791, Thiruvottiyur High Road,
Chennai - 600 019. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned order of the respondent passed in TIN/33811102633/2012-13 dated 21.08.2017 and to quash the same and further direct the respondent to complete the assessment in accordance with law after providing an opportunity of personal hearing.

For Petitioner : Mr.N.Murali
For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepts notice on behalf of the respondent. By consent on either side, the writ petition is taken up for disposal.

2.The petitioner is aggrieved by an order of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2012-2013. Admittedly, the petitioner did not respond to the pre-revision notices issued by the respondent dated 23.06.2017 and 18.07.2017. The petitioner was required to file Form WW on or before 31.12.2013. However, till 18.07.2017 the petitioner did not file the same. Though the respondent was not required to give an opportunity or notice to the petitioner to direct them to file Form WW, the respondent issued a notice on 18.07.2017. Even thereafter, the petitioner did not respond. Since the petitioner neither respond to the revision notice dated 23.06.2017 nor file Form WW, pursuant to the notice dated 18.07.2017, the respondent completed the assessment and passed the impugned order.

3.The learned counsel for the petitioner would submit that the respondent ought to have appreciated that Section 63-A of the TNVAT Act is an in-built provision containing consequences for not filing Form WW and mere non filing of Form WW cannot be a basis for revision of assessment under Section 27 of the TNVAT Act. Further, it is submitted that there was a search seizure operation conducted by the Income Tax officials in the business premises of the petitioner, therefore, records could not be produced. Though all the above averments have been made before this Court and arguments were advanced, such a plea was not raised before the Assessing Officer. Therefore, this Court finds no reason as to why such reasons should be gone into, which were never placed before the Assessing Officer. However, considering the fact that the assessment pertains to the year 2012-2013, this Court is inclined to grant one more opportunity to the petitioner subject to stringent conditions.

4.Accordingly, the petitioner is directed to file Form WW along with the penalty of Rs.10,000/- within a period of 15 days from the date of receipt of copy of this order. Together with this, the petitioner shall pay 15% of the disputed tax as quantified in the impugned assessment order. If the above two payments are made and Form WW is filed, then, the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit objections within a period of 15 days from the date of payment of the amounts aforementioned and filing Form WW. On receipt of objections, the respondent shall afford an opportunity of personal hearing and redo the assessment . In the event, the petitioner fails to comply any one of the conditions as referred above, the benefit of this order will not enure to the petitioner and the writ petition will be dismissed automatically, leaving it open to the petitioner to work out their remedies in accordance with law.

5.With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

Sgl

To

Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
No.791, Thiruvottiyur High Road,
Chennai - 600 019.

+1 CC to Spl. Govt., Pleader (Taxes) Sr.No. 77084
+1 CC to Mr. N. Murali , Advocate Sr.No. 77406

W.P.No.27685 of 2017

MD: 21/11/2017