IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27991 of 2017
and W.M.P.No.30031 of 2017

M/s.Sri Kannabiran Stores,
Rep. by its Proprietor,
D.Kaliyaperumal
No.48, Alapakkam Road, Kullanchavadi,
Cuddalore District - 607 301. .. Petitioner

..Vs..

The Commercial Tax Officer,
O/o.Assistant Commissioner,
Cuddalore Taluk Assessment Circle,
Cuddalore District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the order dated 28.07.2017 passed by the respondent in proceedings Rc.A3/232/2015 and quash the same.

For Petitioner : Mr.J.Rajmohan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.J.Rajmohan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, the writ petition is taken up for disposal.

2.The petitioner who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is before this Court challenging the notice of payment dated 28.07.2017 demanding the tax payable by the petitioner for the assessment years 2011-2012 and 2012-2013 including penalty. The petitioner is a small hardware store and from the turnover reported, it is seen that for the entire year, the turnover is little over Rs.24 lakhs. The respondent issued a revision notices dated 09.07.2013 stating that the petitioner has effected interstate purchases and they had violated the provisions of Section 3(4)(a) of the TNVAT Act, 2006. The petitioner submitted their objections stating that they have purchased only exempted goods from other State which is an exempted commodity and requested to drop the proposal to levy tax at 12%. The respondent rejected the objection and confirmed the proposal by notices dated 09.07.2013 and levied tax. However, in the said assessment orders, there is no levy of penalty. Though the assessments were completed in the year 2013, till date, the Department was unable to recover any tax. However, in the impugned notices, not only the tax is demanded but the respondent has also demanded penalty. It is not clear as to how this penalty has been imposed when there is no specific order to the said effect in the assessment order. In any event, the petitioner can be given one more opportunity to go before the Assessing Officer to put forth their stand since it is stated that as of now, the petitioner has closed down its business activity. However, to be entitled to such a remedy, this Court proposes to impose certain conditions.

3.Accordingly, the writ petition is disposed of by directing the petitioner to pay 15% of the tax as computed by the respondent for each of the assessment years, i.e. 2011-12 and 2012-13 and if such payment is made within a period of eight weeks from the date of receipt of a copy of this order, the petitioner will be entitled to treat the assessment orders for the respective years as show cause notice and submit their objections within a period of fifteen days therefrom. On receipt of the objections, the respondent is directed to afford an opportunity of personal hearing to the petitioner and re-do 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, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

cse

To

The Commercial Tax Officer,
O/o.Assistant Commissioner,
Cuddalore Taluk Assessment Circle,
Cuddalore District.

+1cc to Mr.J.Rajmohan, Advocate SR.No.78393
+1cc to Special Government Pleader (Taxes) SR.No.78478

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KK(CO)
GN(24/11/2017)