In the High Court of Judicature at Madras

Dated : 12.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8896 of 2018 & WMP.No.10753 of 2018

Tvl.Saravana Electronics &
Kitchens, rep.by its Proprietor ...Petitioner

Vs

The Commercial Tax Officer, Palacode
Assessment Circle-636808. Dharmapuri. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN.33683292625/2014-15 dated 17.3.2016 and quash the same.

For Petitioner : Mr.Aditya Reddy
For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, 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 has challenged the impugned order of assessment passed under the Tamil Nadu Value Added Tax Act, 2006 for the year 2014-15.

3. The impugned order is dated 17.3.2016. The Statute provides for an appeal to be filed by the dealer in case they are aggrieved by an order of assessment. The Statute also stipulates a period of limitation, within which, such appeal has to be filed. The petitioner miserably failed to avail such an opportunity and at this juncture, the petitioner cannot file an appeal. Even if it is filed, it will be dismissed as barred by limitation.

4. The petitioner is before this Court accepting the fact that they failed to file objections to the revision notice dated 14.1.2016. The case of the petitioner is that the respondent has not given any reasons for having arrived at such a high gross profit percentage. The issue arose on account of the conduct of

the petitioner in not responding to the revision notice and not producing the documents before the Authority. Therefore, the petitioner cannot state that the Authority committed an error in passing the impugned order, as the petitioner alone has to be blamed for the entire exercise.

5. The learned counsel for the petitioner submits that the petitioner is a small dealer and that one opportunity may be granted to go before the Assessing Officer.

6. Considering the submissions and taking note of the fact that the tax effect is not substantial, one opportunity can be granted to the petitioner, however, subject to a condition.

7. Accordingly, the writ petition stands disposed of with a direction to the petitioner to pay 15% of the tax demanded within a period of three weeks from the date of receipt of a copy of this order. If the said condition is complied with, the petitioner is entitled to treat the impugned order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is made clear that if the petitioner fails to comply with the condition imposed, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the petitioner complies with the said condition, the demand of the balance tax and penalty for the assessment year 2014-15 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMP is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Palacode Assessment Circle-636808.
Dharmapuri.

+1 CC to Mr.Aditya Reddy, Advocate sr 27187.
+1 CC to Govt. Pleader(T) sr 27902

WP.No.8896 of 2018 &
WMP.No.10753 of 2018

SP(02/05/2018)