In the High Court of Judicature at Madras

Dated : 19.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13329 to 13332 of 2018
& WMP.Nos.15693 to 15696 of 2018

M/s.Excel Engineering Enterprises, rep.
by its Proprietor Mr.G.Kumaresan ...Petitioner

Vs

The Assistant Commissioner (ST),
Thirupattur Assessment Circle, No.66,
Sama Nagar, Thirupattur-635 601. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the impugned proceedings of the respondent respectively in TIN : 33044621586/2012-13, 33044621586/ 2013-14, 33044621586/2014-15 and 33044621586/2015-16, and quash the impugned orders dated 28.3.2018 as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
For Respondent : Ms.G.Dhanamathri,
Govt. Advocate (Taxes)

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the revision of assessment made by the respondent for the years 2012-13 to 2015-16.

3. The petitioner alone has to be blamed because they did not file their objections to the revision notices dated 29.11.2017 and 09.3.2018 issued by the respondent. In the written instructions given by the respondent to the Special Government Pleader (Taxes), it is stated that the pre-assessment notices dated 29.11.2017 were served on the petitioner on

05.12.2017 as per the postal receipt. Therefore, the respondent cannot be found fault with for confirming the proposals in the said revision notices in the absence of any written objections.

4. It is seen that the re-assessment was based on an inspection conducted between 07.2.2016 and 09.2.2016 in the business premises of the petitioner and it was alleged that there were purchase omissions and sale suppressions after verification of monthly returns of the petitioner in Annexure I and that of the sellers in Annexure II. It is also seen that the petitioner refused to sign the statement recorded by the Enforcement Wing at the time of inspection.

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

6. Considering the said submission, this Court is of the view that one opportunity can be granted to the petitioner, however, subject to a condition.

7. Accordingly, the writ petitions stand disposed of with a direction to the petitioner to pay 15% of the tax demanded in each of the impugned orders 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 orders as show cause notices 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 assessments 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 petitions 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 years from 2012-13 to 2015-16 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (ST),
Thirupattur Assessment Circle,
Thirupattur-635 601.

+1cc to Mr.P.RAJKUMAR, Advocate, S.R.No.38153
+1cc to the Government Pleader, S.R.No.38824

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SV(CO)
TR(29/06/2018)