In the High Court of Judicature at Madras

Dated : 08.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13737 of 2018 &
WMP.Nos.16207 & 16208 of 2018

M/s.Sri Kumaran Stores, rep.
By its Managing Partner
S.B.Chockalingam ...Petitioner

Vs

The State Tax Officer (Additional),
Tindivanam, Villupuram District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN 33337547225122/2015-16 dated 07.5.2018 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha

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, which is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is aggrieved by the impugned assessment order for the year 2015-16.

3. Though the petitioner was granted an opportunity to submit their objections to the revision notice dated 13.3.2018, the petitioner did not submit their objections in spite of the fact that they sought for 15 days' time vide their representation dated 05.4.2018. Therefore, the respondent cannot be faulted for having completed the assessment ex parte, as the petitioner did

not show cause to the revision notice dated 13.3.2018.

4. The learned counsel for the petitioner submits that the petitioner stopped their business activities and what was sold was only closing stock and that there were no purchases effected during the relevant period. Hence, it is further submitted that there was no purchase omission as alleged by the respondent. The learned counsel for the petitioner has also drawn the attention of this Court to the income tax returns and the balance sheet filed for the assessment year 2015-16 to substantiate their plea.

5. In my considered view, the issue should have been placed before the Assessing Officer for consideration and not before this Court and that this Court cannot convert itself into an Appellate Authority to examine the correctness of the impugned order.

6. The learned counsel for the petitioner pleads that one more opportunity may be granted to the petitioner so that the records can be placed before the respondent to establish that there was no sales suppression.

7. Considering the facts and circumstances of the case and in the light of the stand taken by the petitioner that they stopped business activities, this Court is inclined to grant one opportunity to the petitioner.

8. 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 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 III)

//True copy//

Sub Assistant Registrar

RS

To

The State Tax Officer (Additional),
Tindivanam, Villupuram District.

+1cc to Mr.R.Hemalatha, Advocate SR.No.36374
+1cc to Special Government Pleader(Taxes) SR.No.36331

WP.No.13737 of 2018 & WMP. Nos.16207 & 16208 of 2018

GN(18/06/2018)