IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15243 of 2018
and W.M.P.No.18068 of 2018

K.Basuvalingam,
Managing Partner,
M/s.Devi Gas Service,
No.1, Lawrence Road,
Durai Plaza,
Cuddalore-607 002. ... Petitioner

vs.

The Principal Director of Income Tax (INV),
New Income Tax Building,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records and to quash the show cause notice F.No. Pr.DIT (INV)/ prosecution/2017-2018 dated 15.03.2018 issued by the respondent.

For Petitioner : Mr.R.Gururaj

For Respondent : Mr.A.P.Srinivas,
Standing Counsel

O R D E R

Heard Mr.R.Gururaj, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the respondent. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner is aggrieved by a show cause notice issued by the respondent dated 15.03.2018, before initiation of prosecution under Section 277 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The learned counsel for the petitioner submitted that though the petitioner has filed the writ petition for a larger relief to quash the show cause notice, the petitioner would be

satisfied if the explanation / reply given by the petitioner dated 19.03.2018 is considered by the respondent.

4. The learned Standing Counsel for the respondent submitted that the legal position is that no show cause notice is required to be issued prior to initiation of proceedings under Section 277 of the Act and yet by way of information and intimation to the assessee, this procedure is adopted, so that the assessee will have an opportunity.

5. Furthermore, it is submitted that initiation of prosecution under Section 277 of the Act has got nothing to do with the assessment procedure, which has to be prosecuted by the petitioner in an independent manner. Further, it is submitted that the respondent will consider the reply given by the petitioner and take appropriate action.

6. With regard to the petitioner's entitlement to obtain copies, it is submitted that such right will accrue only after summons is issued by the Competent Court and if one summons is issued, it is well open to the assessee to request copies of the orders from the concerned Court.

7. In the light of the limited relief sought for by the petitioner, there will be a direction to the respondent to consider the reply given by the petitioner before taking any decision pursuant to the impugned show cause notice.

8. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Principal Director of Income Tax (INV),
New Income Tax Building,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

+1cc to Mr.Gururaj, Advocate, S.R.No.39473
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.39499

W.P.No.15243 of 2018

SSI(CO)
GSP(25/06/2018)