In the High Court of Judicature at Madras

Dated : 04.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.16599 of 2018 & WMP.No.19768 of 2018

Tvl.Kumaran Agency, rep.
By its Partner ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Oragadam Assessment Circle,
Station : 3/177, Bazzar Road,
Hajiyar Nagar, Padappai-601301. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in order dated 05.10.2016 in TIN 33041667063/2014-15 and quash the same.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the revision of assessment made by the respondent for the year 2014-15.

3. The writ petition should have been thrown out on the ground of laches, as the impugned order is dated 05.10.2016. Further, by now, the limitation period prescribed for availing the appeal remedy is also over. So, the petitioner cannot approach the Appellate Authority also.

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

5. The assessment pertains to the year 2014-15. It is pertinent to note that the assessment was deemed to have been completed. However, on verification of the records, the respondent sought to reopen the assessment on the ground that there is a mismatch of the details between Annexure I of the buyer and Annexure II of the seller and ultimately concluded that the input tax credit availed by the petitioner to the

extent of Rs.68,298/- should be reversed. The respondent also imposed a penalty to the extent of 100% of the tax for incorrect availment of the input tax credit. Though the respondent sent the revision notice dated 10.3.2016, even after receipt of the same, the petitioner failed to file any objections. Hence, the petitioner alone should be blamed and the respondent cannot be found fault. However, since the re-assessment is based on mismatch of the details culled from the Departmental website, this Court is of the considered view that one opportunity can be granted to the petitioner, however, subject to a condition.

6. 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 entire penalty for the assessment year from 2014-15 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commercial Tax Officer, Oragadam Assessment Circle,
Station 3/177, Bazzar Road, Hajiyar Nagar, Padappai-601301.

+1cc to Mr.Adithya Reddy, advocate sr.no.43270
+1cc to Special Government Pleader(Taxes)sr.no.43701

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WMP.No.19768 of 2018

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