In the High Court of Judicature at Madras

Dated : 06.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.16739 of 2018 & WMP.No.19927 of 2018

Sri Murugan Stores, rep.by
its Proprietor K.Suresh Kumar ...Petitioner

Vs

The Commercial Tax Officer, Chrompet
Assessment Circle, 1117, Station Road,
Chrompet, Chennai 44 ...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 TIN No. 33720941905/2011-12 dated 09.2.2015 on the file of the respondent and quash the same as illegal and contrary to law.

For Petitioner : Mr.A.Thiagarajan, SC for Mr.M.Nallathambi

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 has filed this writ petition challenging the impugned order dated 09.2.2015 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2011-12.

3. The writ petition should have been thrown out on the ground of laches, as the impugned order is dated 09.2.2015. 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 Senior Counsel appearing on behalf of 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 2011-12. As already stated, though the impugned order is dated 09.2.2015, so far,

the respondent is not able to recover a single penny from the petitioner. It is pertinent to note that for the relevant assessment year, the petitioner reported a purchase turnover in a sum of Rs.9,08,346/- whereas on verification of the sales details furnished by the sellers in Annexure II through the official website of the Department, the respondent found that the petitioner effected purchase for a sum of Rs.52,90,564/-. The respondent sought to reopen the assessment on the ground that the purchase turnover exceeded Rs.50 lakhs and assessed the petitioner to tax at 14.5% on the estimated sale value for the relevant assessment year.

6. It is rather surprising to note that though the respondent sent the revision notice dated 19.1.2015, even after receipt of the same, the petitioner failed to file any objections. As could be seen from the typed set of papers, the bank account of the petitioner has been attached by proceedings dated 22.6.2018. 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, as per Annexure II of the selling dealers, 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.

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 for the assessment year from 2011-12 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMP is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer, Chrompet Assessment Circle,
1117, Station Road, Chrompet., Chennai 44.

+1 CC to Mr.M. Nallathambi, Advocate sr 44157.
+1 CC to The Spl. Govt. Pleader sr 44171.

WP.No.16739 of 2018&
WMP.No.19927 of 2018

MP(CO)
SP(20/07/2018)