In the High Court of Judicature at Madras
Dated : 17.7.2018
Coram :
The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17895 of 2018 &
WMP.Nos.21189 & 21190 of 2018

M/s.Selvam Cell Center, rep.
By its Proprietor P.Anand ...Petitioner

Vs

The Commercial Tax Officer (Addl.),
(FAC), Kallakurichi, 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 33924783577/2009-10 dated 02.11.2015 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.J.Prasanna Kumar
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 2009-10.

3. The respondent sought to reopen the assessment by sending the revision notice dated 25.8.2015 to the petitioner on the ground that from the verification of the official website of the Commercial Taxes Department, it was noticed that the petitioner reported higher purchase turnover in the monthly return and claimed input tax credit for the months from April 2009 to March 2010. The respondent further stated that the petitioner claimed input tax credit to the tune of Rs.71,999/- in excess during the relevant assessment year. There was also a proposal to levy penalty under Section 27(4)(ii) of the said Act. The petitioner sent a reply to the said revision notice and it was received by the office of the respondent on 15.10.2015. Along with the reply, it is stated that the petitioner enclosed all the bills. However, the respondent, in the impugned order, concluded that even after receipt of the said revision notice, the petitioner did not file their objections and completed the assessment. Further, the writ petition should have been thrown out on the ground of laches, as the impugned order is dated 02.11.2015. In addition to that, 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. Since the issue pertains to reversal of input tax credit claimed by the petitioner and in view of the fact that though the petitioner enclosed the purchase bills along with the objections, the respondent concluded that the petitioner did not file their objections, 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 2009-10 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS
To

The Commercial Tax Officer (Addl.), (FAC), Kallakurichi,
Villupuram District.

+2ccs to Mr.J.Prasanna Kumar, Advocate,S.R.No.47214,46994.
+1cc to the Spl.Government Pleader(Taxes),S.R.No.47676.

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Nos.21189 & 21190 of 2018

SS (CO)
BM 03/02/2018