In the High Court of Judicature at Madras

Dated : 17.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17906 of 2018 & WMP.No.21203 of 2018

M/s.Sri Durga Enterprises, rep.
by its Proprietor B.Karthikesan ...Petitioner

Vs

The Commercial Tax Officer,
Tiruvarur Assessment Circle,
Tiruvarur. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN No.33853922013/2015-16 dated 04.5.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan
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 2015-16.

3. The petitioner alone has to be blamed because they did not file their objections to the revision notice dated 13.4.2018 issued by the respondent. Therefore, the respondent cannot be found fault with for confirming the proposal in the said revision notice in the absence of any written objections.

4. The revision of assessment is on the ground that the petitioner did not file their returns, but one M/s.Suresh Jewellery, Moormarket, Chennai claimed input tax credit on certain purchases effected during the relevant assessment year, that the petitioner failed to pay the tax collected from the sellers and that the petitioner had not declared the total and taxable turnover for the relevant year to the Department. The respondent, while concluding the assessment, estimated the

actual sales suppression and also added equal time addition apart from imposing penalty under Section 22(5) of the Tamil Nadu Value Added Tax Act, 2006.

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

6. Since the issue pertains to mismatch of the details based on the web report, 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 and penalty for the assessment year 2015-16 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer, Tiruvarur Assessment Circle, Tiruvarur.
+ 1 cc to Mr.K. Soundararajan, Advocate Sr.47727
+ 1 cc to Government PleaderSr.47677

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(CO)KJ
EU(06/08/2018)