IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.7.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18076 of 2018 & WMP.No.21353 of 2018

Tvl.Nandhi Auto Agency,
rep. by its Proprietor ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Palacode, Dharmapuri-636808. ...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 order dated 03.4.2017 in TIN 33563292303/2015-16 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 2015-16.

3. The petitioner alone has to be blamed because they did not file their objections to the revision notice dated 20.1.2017 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. Further, the writ petition should have been dismissed on the ground of laches, as the impugned order is dated 03.4.2017. 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. The respondent reopened the assessment on the ground that on scrutiny of the returns of the dealer for the relevant year, it was noticed that the petitioner effected purchases from various dealers and claimed input tax. However, there were some differences in the turnover reported by the other end dealers' Annexure II. Since the issue pertains to mismatch of the details in Annexure I of the petitioner and in Annexure II of the other end dealers, 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 the entire 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(CS-IX)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commercial Tax Officer,
Palacode, Dharmapuri-636 808.

+ 1 cc to MR. Adithya Reddy, Advocate Sr.47118
+ 1 cc to Mr.Government Pleader Wr.47680

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WMP.No.21353 of 2018

(CS-IX)
EU(02/08/2018)