In the High Court of Judicature at Madras

Dated : 23.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18685 of 2018 & WMP.No.22035 of 2018

Tvl.Datang Technologies &
Engineering India Pvt. Ltd.,
rep.by its Director Mr.Ji Dong ...Petitioner

Vs

The Commercial Tax Officer,
Chidambaram I Circle,
Chidambaram. 608801. ...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 15.3.2018 in TIN 33264442985/2014-15 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 has filed this writ petition challenging the impugned order dated 15.3.2018 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2014-15.

3. The petitioner alone has to be blamed because they did not file their objections to the pre-assessment notice dated 13.11.2017 issued by the respondent. Though the petitioner sought 15 days' time to file objections vide letter dated 15.12.2017, they failed to do so. Once again, time was granted to the petitioner till 12.2.2018 to file objections. Even thereafter, the petitioner did not file their objections. Hence,

the respondent cannot be found fault with in confirming the proposals in the pre-assessment notice in the absence of any objections.

4. It is seen that the pre-assessment was based on an inspection conducted on 29.11.2016 in the business premises of the petitioner and it was alleged that on verification of the auditor statement, it came to light that in respect of the purchases made outside Tamil Nadu intended for supply contract, the transit sales turnover was not reported in the monthly returns under the Central Sales Tax Act, 1956 and ultimately, it was concluded that the cost of material consumed would amount to Rs.21,87,94,634/- and since the contract was a direct contract for purchase and supply, a different purchase turnover was adopted for arriving the deemed sale value and the difference in sales turnover was assessed to tax.

5. Further, though the petitioner claimed exemption on the turnover of Rs.19,95,23,070/-, they did not file any records in support of their claim of exemption in spite of the fact that details were called for by the officials of the Enforcement Wing and ultimately, the petitioner was assessed to tax at 14.5% on the said sum of Rs.19,95,23,070/-. It was also alleged that the petitioner did not file Form WW under Section 63A(2) of the State Enactment. Hence, the respondent levied penalty both under Section 27(3) by imposing 150% of the tax due on actual suppressed turnover and also under Section 63A(2) of the said Act to the tune of Rs.10,000/-. Ultimately, the proposals in the pre-assessment notice were confirmed by passing the impugned order.

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

7. Considering the said submission, this Court is of the view that one opportunity can be granted to the petitioner, however, subject to a condition.

8. 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(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Chidambaram I Circle,
Chidambaram. 608801.

+1cc to the Special Government Pleader Sr.49567

WP.No.18685 of 2018&
WMP.No.22035 of 2018

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srg 3/8/2018