In the High Court of Judicature at Madras

Dated : 02.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.19828 of 2018 & WMP.No.23285 of 2018

Tvl.Sun Powers, rep.by its Proprietrix Smt.S.Radhamani ...Petitioner

Vs

The State Tax Officer (ST), Park Road Circle, Erode. ...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 files of the respondent in TIN.33412862045/2009-10 dated 24.4.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.M.Hariharan, AGP (T)

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 24.4.2018 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2009-10.

3. The petitioner alone has to be blamed because they did not file their objections to the notice issued on 05.5.2017 nor cooperated with the Department by producing the accounts. Hence, the respondent cannot be found fault with in confirming the proposal in the said notice in the absence of any objections.

4. It is seen that the re-assessment was based on verification of the monthly returns and the respondent concluded that in the absence of accounts, the claim of input tax credit during the relevant assessment year became ineligible and

arrived the total tax due and also imposed penalty for wrong availment of the input tax credit.

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

6. Considering the said submission, this Court is of the 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 entire penalty for the assessment year 2009-10 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 State Tax Officer (ST), Park Road Circle, Erode.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.53556

+1cc to the Spl Government Pleader, S.R.No.52988

WP.No.19828 of 2018&
WMP.No.23285 of 2018

GP(CO)
GSP(21/08/2018)