IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.01.2019
CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.1104 of 2019
and
W.M.P.Nos.1248 & 1249 of 2019

M/s.Sridhar and Co.,
Rep. by its Proprietor U.Sridhar
No.20-D, Bye Pass Road,
Near Samiyar Madam,
Ambur - 635 802
Vellore District.
...Petitioner

vs.

The State Tax Officer
Ambur Assessment Circle
Ambur, Vellore District. ...Respondent

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33754261568/2011-2012 dated 19.11.2018 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 19.11.2018 passed in respect of assessment year 2011-2012.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

4. It is seen that a revision notice dated 24.09.2018 was issued on the petitioner, wherein, apart from alleging that the petitioner has not maintained the purchase and sales register and the Input Tax Credit claim and adjustment accounts as

required under the law, the Assessing Officer had also alleged that there is sales suppression to the tune of Rs.3,03,983/-. Hence, the petitioner was called upon to file their objections. In the reply dated 19.11.2018 to the said notice, the petitioner admitted that the sales turn over of Rs.3,03,983/- was omitted to be reported and that however, when the said fact is pointed out, they have paid the tax at the time inspection. Thereafter, the Assessing Officer passed the impugned order of assessment, by making equal addition towards the sales suppression and also imposing penalty. There is no dispute to the fact that the petitioner was given an opportunity of personal hearing as well.

5. The learned counsel for the petitioner contended that when the petitioner has admitted the liability and paid the tax, the Assessing Officer is not justified in making equal addition. On the other hand, the Assessing Officer has found that but for the inspection and detection by the Department the sales suppression would not have come to the notice of the Department. Therefore, the Assessing Officer justified his finding on the equal addition.

6. Whether the equal addition is warranted or not in the given facts and circumstances, has to be considered and decided only by the next fact finding authority. Therefore, this Court, by exercising the jurisdiction under Article 226 of the Constitution of India, is not inclined to entertain the present writ petition, more particularly, when this Court finds that the principles of natural justice has been fully complied with by the Assessing Officer. Therefore, it is for the petitioner to agitate the matter before the Appellate Authority by filing a regular appeal. Instead of doing so, filing the present writ petition cannot be entertained. Therefore, without expressing any view on the merits and contentions raised by the petitioner as well as the order passed by the Assessing Officer, this writ petition is disposed of, by granting liberty to the petitioner to file a statutory appeal by complying with the other statutory requirements, within the period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same shall be considered and decided on merits and in accordance with law without reference to the period of limitation. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The State Tax Officer
Ambur Assessment Circle
Ambur, Vellore District.

+1 CC to Spl. Govt. Pleader(T) sr 4293.

W.P.No.1104 of 2019

RK(CO)
SP(06/02/2019)