IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.10532 of 2015 and MP.Nos.1 & 2/2015

S.G.S.Auto Parts
represented by Partner
Mr.M.Muthu
No.51, Seethammal Colony
Alwarpet, Chennai 600 018 .. Petitioner

-vs-

Assistant Commissioner (CT)
Commercial Department
Alwarpet Assessment Circle
46, Greenways Road
Chennai 600 028 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order in TIN/33780821010/2012-13 dated 27.03.2015 of the respondent, confirming the impugned notice in TIN/33780821010/2012-13 dated 14.01.2015, quash the same and direct the respondent to consider the monthly returns and other documents submitted by the petitioner to assess the actual turnover afresh for the year 2012-13.

For Petitioner :: Mr.K.V.Subramanian
Senior Counsel for
M/s K.V.Subramanian Associates

For Respondent :: Mr.S.Kanmani Annamalai
Addl.Government Pleader (Taxes)

ORDER

This writ petition has been filed by S.G.S. Auto Parts challenging the impugned revision notice dated 14.1.2015 bearing TIN No.33780821010/2012-2013 issued by the Assistant Commissioner(CT), Alwarpet Assessment Circle, on the ground that the respondent, with a wrong assessment, has issued the impugned notice dated 14.1.2015 followed by the impugned order dated 27.3.2015 when the total turnover of the petitioner has been below Rs.50 lakhs.

2. Learned senior counsel for the petitioner submitted that the petitioner is a firm dealing with the business of second and subsequent sales of auto parts. As their sales turnover has been below Rs.50 lakhs from the date of starting the business, they have been filing the monthly returns and the same were accepted by the respondent without any query. While so, without verifying the record, the respondent sent a notice dated 14.1.2015 informing that the dealers have reported a sales turnover of Rs.20,41,693/- for the year 2012-13 under the Tamil Nadu Value Added Tax Act, 2006 from April, 2012 to September, 2012 and from October, 2012 to March, 2013, however, the dealers have not filed the returns or paid the tax. Secondly, it was also averred that the verification of the purchase records from April, 2012 to September, 2012 revealed a value of Rs.59,93,998/-. Based on this wrong assessment, adding the same value for the remaining six months from October, 2012 to March, 2013, the respondent proposed to re-determine the turnover at Rs.1,19,87,996/- at the rate of 14.5%. Accordingly, the respondent has worked out the alleged tax of Rs.19,12,085/- with a further proposal of levying penalty of Rs.28,68,128/-. Continuing his arguments, the learned senior counsel submitted that after getting the notice, immediately the petitioner has filed the monthly returns for the period from October, 2012 to March, 2013 and paid the tax. However, without considering the fact that the petitioner has filed the monthly returns and also paid the tax, surprisingly, issued the impugned order confirming the notice dated 14.1.2015. The learned senior counsel, in an effort to demonstrate that the respondent has proceeded without application of mind, has drawn the notice of this Court to the second page of the impugned order dated 27.3.2015, wherein the respondent has mentioned that the trading account is not certified by any auditor. When the petitioner has all along been filing the monthly returns from the beginning of business showing that the sales turnover is below Rs.50 lakhs, as per Section 63A of the TNVAT Act, 2006, every registered dealer, whose total turnover including zero rate sales exceeding one crore rupees alone, shall get his accounts in respect of that year audited by an Accountant and submit a report of such audit in the prescribed form to the assessing officer within such period as may be prescribed, but, in the present case, when there is no basis or foundation for the respondent to arrive at the conclusion that the petitioner firm has exceeded the turnover of one crore rupees, the respondent ought not to have mentioned that the trading account of the petitioner has not been certified by the auditor, since admittedly the turnover is below Rs.50 lakhs. For all these reasons, he sought for interference with the impugned order.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent also is unable to support the impugned order for two reasons. Firstly, as per Section 63A, the petitioner firm, having filed the monthly returns along with the payment of tax for the assessment year 2012-13, has not left any room for the respondents to

suspect that the turnover of the petitioner firm has exceeded more than one crore rupees. Secondly, there is no provision for levying the equal addition.

4. As rightly contended by the learned Additional Government Pleader for the respondent, this Court is not able to find any merits in the impugned order, when admittedly the petitioner has filed the monthly returns and also paid the tax for the year 2012-13. Hence, the impugned order is set aside and the matter is remanded back to the file of the assessing officer to consider the issue afresh on merits. Needless to mention that the respondent, on receipt of this order, shall issue notice and after affording an opportunity of personal hearing to the petitioner to make out their case, shall pass appropriate orders. Without being influenced by any of the observation made hereinabove, the assessing officer is directed to consider the matter afresh independently. With the above direction, the writ petition stands disposed of. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
Commercial Tax Department
Alwarpet Assessment Circle
46, Greenways Road
Chennai 600 028

1 cc to M/s K.V.Subramanian Associates, Advocate Sr.No.30998
1 cc to Special Government Pleader.Sr.No.30848

W.P.No.10532 of 2015

ala(co)
pmk.21.7.2015