IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17174 of 2015
and M.P.No.1 of 2015

M/s.Vinayaga Agency
rep. by its Partner
I Block 1st Floor
1850, 6th Avenue
Anna Nagar West Chennai-40 [Petitioner]

Vs

The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Chennai-107

[Respondent]

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorari, to call for the records of the respondent in the impugned order in TIN No.33651351138/ 2013-14 dated 10.4.2015 quash the same as there is an error apparent on record.

For Petitioner :Ms.Radhika Chandrasekhar

For Respondent : Mr.V.Haribabu, AGP(T)

O R D E R

Heard Ms.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for final disposal.

2. This writ petition has been filed by M/s Vinayaga Agency, represented by its Partner, challenging the correctness of the impugned proceedings passed by the The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai in TIN No.33651351138/ 2013-14 dated 10.4.2015.

3.1 Learned counsel for the petitioner would submit that the impugned order is challenged on the ground that there is an error apparent on the face of the record. Adding further, the learned counsel for the petitioner would submit that the impugned order shows Rs.2,90,79,532/- as sales turnover and Rs.17,17,149/- as the tax payable, calculating the tax at the rate of 6% on Rs.2,90,79,532/-, whereas there is no 6% VAT rate prescribed under the TNVAT Act.

3.2. Further, according to the learned counsel for the petitioner, the impugned order shows the differential turnover as Rs.2,03,14,231/- and arrives at Rs.38,94,232/- as tax payable which is 19% tax rate, which is also not warranted by TNVAT Act.

3.3. Adding further, learned counsel for the petitioner submits that the respondent having taking into account the purchase turnover at Rs.87,65,301/-, ought not to have fixed the VAT at Rs.56,11,381/- and instead of mentioning the VAT payable by PEPSICO as Rs.18,14,384/-, it was wrongly mentioned as Rs.17,17,149/-.

3.4 Learned counsel for the petitioner, adding further, would submit that the petitioner made purchases from PEPSICO for the assessment year 2013-2014 to the extent of Rs.2,98,57,246/- whereas it was wrongly mentioned as Rs.87,65,301/- and when the VAT paid by the petitioner for 2013-2014 was Rs.18,14,969/-, it was wrongly mentioned as Rs.56,11,381/-.

3.5 Therefore, learned counsel for the petitioner submits that an application was taken by the petitioner under Section 84 of the Tamil Nadu Value Added Tax, 2006. However, since the same was not accepted, it was sent by registered post on 15.06.2015. The respondent has not even considered the error apparent on the impugned order, inspite of the fact that the same was brought to their notice. Therefore, citing various decisions of this Court seeking rectification right from the Judgement of the Hon'ble Supreme Court in Karamchand Thaper and Bros. vs. State of Uttar Pradesh reported in (1976) 38 STC 593 and this Court decision in the case of Madras Auo Service Private Limited vs. JCTO (1969) 23 STC 111 for a proposition that application for rectification of mistake filed by the assessee is maintainable, the learned counsel sought for a mandamus to the respondent to consider and pass orders on the application filed under Section 84 of the TNVAT Act, otherwise, according to the learned counsel, the petitioner would be put to huge financial hardship.

4. Learned Additional Government Pleader (Taxes) would submit that the respondent may be directed to dispose of Section 84 application sent by the petitioner.

5. Considering the limited prayer now made by the learned counsel for the petitioner and considering the fact that the respondent has wrongly calculated the tax at 6% on Rs.2,90,79,532/-, when there is no provision in the TNVAT Act for calculating at 6%, coupled with the fact that the respondent has arrived Rs.38,94,232/- by calculating tax at 19%, which is unwarranted by

the TNVAT Act, this Court is of the considered view that a direction may be given to the respondent to consider Section 84 application sent by the petitioner through registered post and pass orders on merits and in accordance with law.

5. In view of the above, without expressing the merits of the matter, the respondent is hereby directed to consider the Section 84 application sent by the petitioner through registered post and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. It is made clear that till such time, the impugned order shall be kept in abeyance.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT)
Koyambedu Assessment Circle
Chennai-107

+1 cc to Special Government Pleader taxes sr.30508
+1 cc to Mr.K.Vaitheeswaran, Advocate sr.30473

W.P.No.17174 of 2015

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