BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.07.2015

CORAM

THE HONOURABLE MR.JUSTICE.R.MAHADEVAN

W.P(MD).No.11359 of 2015

Tvl.Sundaram Traders,
rep.by its Proprietor,
S.Ramasamy,
S/o.Somasundaram Chettiar,
No.5/123, Main Road,
Pottalpudur,
Tirunelveli District-627 423. ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commercial Tax Officer,
Commercial Taxes Office,
No.1/22, Thilagapuram Main Road,
Ambasamudram,
Tirunelveli District-627 401. ...Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the second respondent to rectify the error in his order dated 09.07.2014 by considering the petitioner's representation dated 24.03.2015.

For petitioner : Mr.B.Rooban
For R.1&2 : Mr.R.Karthikeyan
Additional Government Pleader

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ORDER

The petitioner has come forward with this Writ Petition praying for a Writ of Mandamus to direct the second respondent to rectify the error in his order dated 09.07.2014 by considering the petitioner's rectification petition dated 24.03.2015.

2. Mr.R.Karthikeyan, learned Additional Government

Pleader takes notice for the respondents.

3. By consent, this Writ Petition itself is taken up for final disposal.

4. The learned counsel appearing for the petitioner would submit that the second respondent has erroneously passed a revised assessment order in TIN No.33245622031/2007-2008 dated 09.07.2014 pursuant to an observation of the Auditor's General Audit in par ISRI/ST-VI/Unit-V 15-84/5/13-14 dated 10.03.2014. The second respondent has passed the said revised order by forfeiting the entire input tax credit to the tune of Rs.94,478/- as ineligible under Section 41 of the TNVAT Act and demanded the petitioner to pay the same as if it is arrears of tax. Since the section was substituted by the amendment, the earlier clause was replaced and the substituted clause would have the effect of amending the operation of law during the period in which it was in force. So, the amended Section of 41 would stand substituted from its inception i.e.with effect from 01.01.2007. Hence, the forfeiture of input tax credit by the second respondent vide the impugned order is unjustified and against the statutory provisions and liable to be set aside. The earlier version of Section 41 of the TNVAT Act is substituted and the same will have the effect from 01.01.2007. i.e. from the date of implementation of the TNVAT Act. Therefore, the learned Counsel prayed for an appropriate direction.

5. The learned Additional Government Pleader appearing for the respondents would submit that the representation of the petitioner will be considered in accordance with law.

6. From the submissions of the learned Counsel for the petitioner, it is seen that the respondents had passed a revised order dated 09.07.2014 without considering the “Substitution” / amendment brought out by the State of Tamil Nadu in Section 41 of the TNVAT Act vide Act No.3/2012. In this connection, the petitioner made a detailed petition to the respondents on 24.03.2015 to pass order under Section 84 of the TNVAT Act. Therefore, without going into the merits of the claim made by the petitioner in this Writ Petition, the second respondent is directed to pass appropriate orders on the petition, dated 24.03.2015, on merits and in accordance with law under Section 84 of the TNVAT Act, after giving an opportunity of hearing to the petitioner, within a period of six weeks

from the date of receipt of a copy of this order.

With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub - Assistant Registrar

To
1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commercial Tax Officer,
Commercial Taxes Office,
No.1/22, Thilagapuram Main Road,
Ambasamudram, Tirunelveli District-627 401.

+1 CC to Mr.B.Rooban, Advocate, SR.No.36190
+1 CC to Special Government Pleader, SR.No.36578

W.P(MD).No.11359 of 2015

06.07.2015

ssm
SSM:24.07.2015:3P/5 C