BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.7.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD).No.13148 of 2015
and
M.P(MD).No.1 of 2015

Tvl.Varthini Enterprises,
rep.by its Proprietrix,
J.G.Nivedhitha,
Tirunelveli Town-627 006. ...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 Deputy Commercial Tax Office,
Tirunelveli Bazaar Circle,
Commercial Taxes Buildings,
Reserve Line Road, Palayamkottai,
Tirunelveli-627 002. ...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN/33055642132/2014-2015 dated 11.03.2015 and quash the same and consequently to direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : M/s.B.Rooban
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN/33055642132/2014-2015 dated 11.03.2015 quash the same and to consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

2. The main ground on which this Writ Petition preferred by the petitioner is that the second respondent has levied penalty under Section 27 of TNVAT Act (for short 'the Act') which is meant for revision of assessment. For the notice issued for Provisional Assessment under Section 25 of the Act, the second respondent has passed the impugned

order under Section 22(2) of the Act as deemed assessment and levied penalty under Section 27 of the TNVAT Act which is meant for revision of assessment. So, the impugned order of the second respondent is in gross violation of statutory provisions and the same is bad in law.

3. The Additional Government Pleader was also put on notice. He would submit that since the issue is of revenue in nature, necessary safe guards have to be made so as to protect the interests of the Government. Therefore, the impugned order shall be sustained in its entirety.

4. As rightly pointed out by the learned Counsel for the petitioner though the pre-provisional assessment notice issued by the second respondent is under Section 25 of the TNVAT Act, the impugned order has been passed arbitrarily under Section 22(2) of the TNVAT Act and penalty has been levied under Section 27 of the TNVAT Act and hence the same is liable to be set aside.

5. In view of the above, the impugned order in this Writ Petition stands set aside and the matter is remitted back to the authorities concerned for passing fresh orders after giving an opportunity to the petitioner and thereafter, the re-assessment shall be done by the respondents. Such exercise has to be carried out within a period of two months from the date of receipt of a copy of this order

With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/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 Deputy Commercial Tax Office,
Tirunelveli Bazaar Circle,
Commercial Taxes Buildings,
Reserve Line Road, Palayamkottai,
Tirunelveli-627 002.

+1cc to Mr.B.Rooban, Advocate SR.No.41936
+1cc to Special Government Pleader, Madurai Bench of Madras High Court, Madurai. SR.No.42244

W.P(MD).No.13148 of 2015
and
M.P(MD).No.1 of 2015
28.07.2015

ssm

NS/18.08.2015 : 2p/5c