IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.15889 of 2015
& M.P.No.1 of 2015

M/s. Rajendran Timber and Plywood,
Rep. By its Proprietor,
No.763/193 Velachery Road,
Selaiyur, Chennai - 600 073 ... Petitioner

Versus

The Assistant Commissioner (CT),
Selaiyur Assessment Circle,
Chennai - 600 073 .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the respondent, in his proceedings in TIN 33620944482/2012-13 dated 29.12.2014, quash the order passed therein and to direct the respondent to pass revised orders pursuant to the amendments to Section 3 (4) of the TNVAT Act, 2006, as per Act 27 of 2011 read with G.O.Ms.No.135, dated 30.10.2011.

For Petitioner : Mr. C.Baktha Siromani
For Respondent : Mr. Manoharan Sundaram,
Addl. Govt. Pleader (T)

O R D E R

Heard Mr.C.Baktha Siromani, learned counsel appearing for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader, appearing for the respondent. By consent of the learned counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a proprietary concern, has registered as a dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act). The respondent issued a notice, dated 27.09.2013, stating that the petitioner has filed “K-returns” under Section 4 (3) of the TNVAT Act, for the year 2012-2013 and on scrutiny of the monthly returns, it was noticed that the petitioner has crossed Rs.50 lakhs of the taxable turnover for the said year. Therefore, it is stated that the petitioner violated Section 4 (3) of the Act and it was directed to pay tax at 14.5% on the taxable turnover within a period of seven days. On receipt of the notice, the petitioners sent a reply on 30.10.2013 stating that they are

availing compounding scheme / option, even under the TNGST Act, for the period from April 2012 to December 2012 and have been filing 'K-Returns' under Section 4 (3) of the TNVAT Act, and in this period, they have crossed Rs.50 lakhs, for which, they will continue for the subsequent years to submit the option letter to the Office of the respondent and change to 'Form-I' mode. The petitioner enclosed the Delivery Note Acknowledgment and stated that they will be liable to pay the excess amount of Rs.32,228/- with rate of tax at 14.5%. Therefore, they requested the respondent to drop the proposal and assess their turnover under Section 3 (2) of the TNVAT Act. This objection is said to have been received by the Office of the respondent, vide entry in Delivery Book. However, the impugned assessment order has been passed by the respondent stating that there is no objection given by the petitioner to the notice dated 27.09.2013.

3. The case of the petitioner is that the respondent should have taken into consideration the notification issued under Section 3 (4) of the TNVAT Act and G.O.Ms.No.135, dated 30.10.2011, which is effective from 01.04.2012, and the petitioner has to pay higher tax only for the excess amount of Rs.32,228/-, which is more than Rs.50 lakhs limit and as per the Government Order and the amendments to Section 3 (4) of the Act, the petitioner is entitled to avail Input Tax Credit for the turnover, which exceeds Rs.50 lakhs and the said Government Order, being a beneficiary notification, is applicable to the year 2012-13 also.

4. In the light of the above facts, this Court is of the view that the respondent should be directed to redo the entire assessment, taking into consideration the submissions made by the petitioner and take a decision after affording an opportunity of personal hearing.

5. In view of the above, this writ petition is allowed and the order of assessment is set-aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to file their objections, within a period of two weeks from the date of receipt of a copy of this order, after which the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to complete the assessment in accordance with law. No costs. Consequently, the connected MP is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner (CT),
Selaiyur Assessment Circle,
Chennai - 600 073

+1 cc to Mr.C.Bakthasiromoni, Advocate,SR.36513

+1 cc to Spl.Govt.Pleader,SR.36688.

nm(co)
krd 20/7

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