IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 10.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17002 of 2016

M/s.The Velan Petroleum
Agencies Rep by its Proprietor E.V.
Muthukumara Ramalingam No.41 Kangayam Road
Tirupur 641 604 ... petitioner

versus

The Assistant Commissioner (CT)
Tiruppur Central I Circle Tiruppur ... respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the proceedings of the respondent in TIN 33882403704/2011-12 dated 24.3.2016 quash the same.

For petitioner ... Mr.S.Raveekumar
For respondent ... Mr.Manokaran Sundaram,
Additional Government Pleader

O R D E R

The petitioner who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006, has filed this Writ Petition challenging the order of assessment passed by the respondent for the year 2011-12.

2. Apart from challenging the impugned order on merits, it is submitted by the learned counsel for the petitioner that the petitioner has filed Special Leave Petition before the Hon'ble Supreme Court against the order of dismissal of the Writ Petitions filed by the petitioner challenging Section 19(11) of the Tamil Nadu VAT Act and the matter is now pending before the Hon'ble Supreme Court in SLP (Civil) No.14350 of 2016 and was last listed on 6.5.2016. It is submitted that there are other connected matters as well.

3. As per Section 23(1) of the Tamil Nadu Vat Act, notwithstanding anything contained under the Act, where an assessee claims that any question of law arising in his case for an assessment year, which is pending before the assessing authority is identical with a question of law arising in his

case for another assessment year, which is pending before the High Court or Supreme Court, he may furnish to the assessing authority a declaration in the prescribed form for verification in the prescribed manner and if the assessing authority agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case.

4. Admittedly, in the instant case, identical issue is pending before the Hon'ble Supreme Court, and therefore, proceedings before the respondent should await the decision of the Apex Court. At this stage to enable to petitioner to seek the benefit under Section 23 of the Act, he is required to make an application, which the petitioner has not done though a plea has been raised in their objections stating that similar issue is pending before the Hon'ble Supreme Court.

5. After hearing the learned counsel for the parties and perusing the materials placed on record, it is not in dispute that validity to Section 19(11) of the Tamil Nadu VAT Act is put to challenge before the Hon'le the Supreme Court by the petitioner themselves. Therefore, the question is as to whether the petitioner would be eligible to claim tax credits in terms of Section 19(11) of the Act. Therefore, the decision to be taken by the Hon'ble Supreme Court would have a direct bearing on the issue involved. Therefore, necessarily, the proceedings before the respondent should await the decision of the Hon'ble Supreme Court. However, for that reason, this Court is not inclined to quash the impugned proceedings suffice it to keep it in abeyance, pending decision by the Hon'ble Supreme Court.

6. In the result, the Writ Petition is disposed of directing the respondents to keep the impugned order of assessment in abeyance and not initiate any action for recovery for the dues, till the Hon'ble Supreme Court disposes of the Special Leave Petition No.14350 of 2016. No costs. Consequently, W.M.P.No.14506 of 2016 is closed.



-s/d-
Assistant Registrar



True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT)
Tiruppur Central I Circle Tiruppur

W.P.No.17002 of 2016

aa25/07/2016