IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.35928 of 2015

Tvl. Ajantha Hardwares,
represented by its Managing
Partner Mr.R.Gabarullah
No.21, New Mosque Street,
Tindivanam,Villupuram District ..Petitioner

Vs

The Commercial Tax Officer,
Tindivanam Assessment Circle,
Nehru Street, Tindivanam .. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the files of the respondent in TIN 33454720737/2011-12 dated 15.09.15 and quash the same.

For Petitioner : Mr. D. Vijayakumar

For Respondents : Mr.S.Manoharan Sundaram
Addl. Govt. Pleader (T)

O R D E R

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

2. The petitioner has come forward with this writ petition challenging the impugned proceedings of the respondent made in TIN 33454720737/2011-12 dated 15.09.15.

3. The petitioner is a dealer in hardwares and agricultural equipments and assessee on the files of the respondent herein. The petitioner filed returns in form 'I' declaring that their total and taxable turnover of Rs.43,10,067/- and adjusted ITC. The assessing authority after verifying the monthly returns filed in form “I”, accepted the same and passed order on 31.10.2012 under section 22(2) of TNVAT Act. The petitioner paid the tax for the assessment year for a sum of Rs.14,092/- after adjusting input tax credit. The respondent, after verifying the payments, found that there is excess tax payment of Rs.5,517/-, passed

refund order on 31.10.2012 for the assessment year 2011-2012. But all of a sudden, the respondent issued notice dated 28.07.2015, stating that as the petitioner has purchased either exempted and taxable goods from the registered dealers at other States, they are not entitled to enjoy the benefits under Section 3(4) of the Act and thereby rejected the returns filed by the petitioner as incorrect and incomplete and further directed the petitioner to pay tax at the rate of 14.5% proposed under section 22(4) of the Tamilnadu Value Added Tax Act, 2006. Thereafter the petitioner filed the copy of monthly returns along with their reply letter and requested the respondent to drop the proposal for the said assessment year. But the respondent without verifying the files passed the impugned order on 15.9.2015 by observing that the dealer is not eligible to pay tax under compounding system under section 3(4) of the Act, since they have effected purchases from other states and sold within the state during the year 2011-2012 and thereby over ruled the objection filed by the petitioner. Against which, the petitioner is before this court.

4. Originally, the claim of the petitioner was governed by Section 3(4) of the Tamilnadu Value Added Tax Act and once the petitioner crossed the limit as provided, proceeded by filing Form ''I'' which was not considered by the assessing authority who carried the assessment with Section 22(2) of the Act, instead of invoking Section 27 of the Act. For all these grounds, the petitioner is before this Court.

5. Learned Additional Government Pleader fairly submitted that since the petitioner already filed Form-I, the same will be considered by the assessing authorities and appropriate orders would be passed.

6. Recording the above submission of the learned Additional Government Pleader, the impugned order passed by the respondent is hereby set aside and the matter is remanded back to the assessing authority to consider Form 'I', assess the turn over as well as the transactions and pass appropriate orders on merits and in accordance with law, after giving due opportunity to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

7. The Writ Petition is disposed of in the above terms. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

msr

To

The Commercial Tax Officer,
Tindivanam Assessment Circle,
Nehru Street,
Tindivanam

1 cc to Mr.D. Vijayakumar, Advocate, Sr. 38

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