IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.25428 of 2016
and
W.M.P.Nos.21746 & 21747 of 2016

M/s.Fazil Traders
Represented by its Proprietor
No.7, Avulia Nagar 3rd Street
Panruti - 607 106. .. Petitioner

..Vs..

The Deputy Commercial Tax Officer (FAC)
Panruti (Town) Assessment Circle
Panruti - 607 106. .. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33034481281/2013-14 and quash the impugned assessment order dated 29.04.2015 made therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.Manokaran Sundaram, A.G.P.,

ORDER

Heard Mr.P.V.Sudakar, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with the consent of either side, the writ petition itself is taken up for disposal.

2.The petitioner is a dealer in automobile spare parts and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act). In this writ petition, the petitioner challenges the order of assessment dated 29.04.2015 for the year 2013-14, which is a revised assessment under Section 27(1)(a) of the TNVAT Act.

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3.It is the case of the petitioner that a provisional notice was issued to the petitioner on 18.03.2014, pursuant to which a provisional order came to be passed on 26.06.2014. Thereafter, the respondent issued a notice dated 10.03.2015 to the petitioner, stating that on verification made with the Commercial Taxes website, it was noticed that the petitioner has not declared certain purchases in the monthly return filed for the assessment year 2013-14. Therefore, the respondent proposes to assess the same as purchase omission and sales omission.

4.It was stated that though the petitioner received a pre-assessment notice, they did not file any objection and they were provisionally assessed for the year 2013-14 and the total and taxable turnover was determined and tax at 14.5% was imposed vide proceedings dated 26.06.2014. It was further stated that though the petitioner received such an order, they did not pay the tax but filed the revised return after receipt of the provisional assessment order.

5.The respondent stated that the revised return has been filed belatedly, that too, after the notice proposing to the assess the dealer provisionally and the respondent proposed not to consider the turn over report with the revised return. With the above facts, the respondent proposed to revise the assessment under Section 27(1)(a) of the Act.

6.The petitioner submitted their objection on 06.04.2015 requesting that the revised return may be taken on file and they also requested for cross-examination of the sellers as an allegation of sale suppression and purchase omission has been made against them. However, the respondent confirmed the proposal and passed the impugned proceedings. On perusal of the impugned order, it is evidently clear that serious disputed question of fact were raised by the petitioner and have been considered by the respondent and an order has been passed.

7.The learned counsel for the petitioner submitted that the petitioner has been left with no other remedy and therefore, has approached this Court by filing the present writ petition.

8.The learned Additional Government Pleader appearing for the respondent submits that as against the impugned order, the petitioner should have filed an appeal within the time permitted under the Act and without resorting to such a remedy available under the Act, the writ petition is not maintainable.

9.After hearing the learned counsels appearing for the parties and perusing the materials placed on record, this Court is of the view that in the peculiar facts and circumstances of the case, the petitioner can be granted an indulgence to prefer an appeal, since the respondent had refused to accept the

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revised return filed by the petitioner solely on the ground that they were filed after notice proposing to assess the petitioner provisionally was given on 18.03.2014.

10.In the light of the above, the writ petition is disposed of by giving liberty to the petitioner to file an appeal as against the impugned order and if such an appeal is filed within a period of thirty days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the appeal, without reference to limitation. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer (FAC)
Panruti (Town) Assessment Circle
Panruti - 607 106.

+ 1 cc to Mr.P.V.Sudakar, Advocate SR 42246

+ 1 cc to Spl.Govt.Pleader SR 42256

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