IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2016

CORAM:

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

Writ Petition No.30235 of 2016
and
W.M.P.Nos.26224 and 26225 of 2016

M/s. Srinivasa Medicals,
Rep. By its Proprietor, P.Purushothaman,
No.51/CS, Sannathi Street,
Vandavasi – 604 408,
Tiruvannamalai District ... Petitioner

Versus

The Commercial Tax Officer,
Vandavasi 604 408
Tiruvannamalai District ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33634600552/2015-16, dated 21.07.2016 and to quash the same.

For Petitioner : Ms. R.Hemalatha

For Respondent : Mr. S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Ms. R.Hemalatha, learned counsel appearing for the petitioner and Mr. S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner, who is a dealer in medicines, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) (hereinafter will be referred to as “the Act”), for the assessment year 2015-16. The petitioner filed their monthly returns in Form-K, declaring the total and taxable turnover at Rs.43,07,745/- and Rs.40,72,645/- and paid tax at 0.5%, in

terms of Section 3 (4) of the TNVAT Act. Inspections were conducted by the Enforcement Wing Officials, in the place of business of the petitioner, on 22.01.2016 and 29.01.2016. Based on the Inspection Report, the respondent / Assessing Officer issued a pre-revision notice, dated 13.06.2016, stating that the petitioner has suppressed the turn over and not disclosed to the Department, though it has exceeded Rs.50 lakhs. The petitioner submitted their objections on 28.01.2016 stating that they are paying tax under Section 3 (4) of the Act and the method adopted to arrive at the alleged omission for the year 2010-11 to January 2016 is not fair and does not confirm to the normal assessment procedure. Further, the petitioner also contested that the equal addition for probable omission is not warranted and the penalty is being proposed under Section 27 (3) of the Act, but the revision of assessment was made under Section 22 (4) of the Act.

3. The respondent has completed the assessment and passed an order, dated 21.07.2016, which is impugned in this writ petition. The petitioner's case is that, their turnover never crossed the threshold limit of Rs.50 lakhs and the respondent has clubbed the turnover for the assessment years from 2010-11 to January 2016 and arrived at the taxable turnover for the purpose of assessment and denied the payment of tax at 0.5% and assessed the entire turnover at 5%, which is arbitrary and illegal.

4. Though the above contention is reiterated by the learned counsel for the petitioner, it is seen that such a contention was not raised by the petitioner before the Assessing Officer, while giving the objections. But, what the petitioner has stated is that they are paying tax under Section 3 (4) of the Act.

5. Prima facie, the contention raised by the petitioner appears to be acceptable. Since in terms of Section 3 (4) (a) of the Act, the dealer, who effects second and subsequent sales of goods purchased within the State, whose turnover relating to the taxable goods, for a year, is less than Rs.50 lakhs, may, at his option, instead of paying tax under sub-section (2), pay a tax, for each year, on his turnover relating to taxable goods at such rate not exceeding 1%, as may be notified by the Government.

6. Thus, it appears that the respondent, for justifying the proposal in the notice dated 13.06.2016, has clubbed all the turnover from the year 2010-11 to January 2016 and has levied the tax at the rate of 5%.

7. In the light of the above statutory provision, it is clear that clubbing of turnover of the orders cannot be done and the respondent should be directed to consider the

objections raised by the petitioner. However, the submission of the petitioner is that, up to the turnover of Rs.50 lakhs, the tax cannot be levied at 5% and that is also one more defect, which is pointed out by the petitioner.

8. In the light of the above discussion, this Court is of the view that the assessment should be re-done, after affording an opportunity to the petitioner to raise all the above contentions before the Assessing Officer.

9. Accordingly, instead of setting aside the impugned proceedings, the petitioner is directed to treat the pre-revision notice, as show cause notice, and submit their objection(s) to the same, after making all the factual and legal contentions, within a period of two weeks from the date of receipt of a copy of this order. On such objection(s) being filed, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law.

10. With the above directions, this writ petition stands disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

To

The Commercial Tax Officer,
Vandavasi 604 408
Tiruvannamalai District.

+1cc to Ms. R.Hemalatha, Advocate, S.R.No.49363
+1cc to the Special Government Pleader(T), S.R.No.49498

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SKV(CO)
CA(15/09/2016)