BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.12.2016
CORAM:
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN
W.P.(MD)No.24589 of 2016
and
W.M.P.(MD)No.17712 of 2016

A.A.Mohammed Ibrahim ... Petitioner

Vs.

The Commercial Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur District. ... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33343840183/2015 - 2016 dated 02.11.2016 and quash the same as illegal, without jurisdiction and unsustainable.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.R.Karthikeyan, AGP

O R D E R

The petitioner seeks for a Writ of Certiorari, calling for the records of the respondent in TIN No.33343840183/2015 - 2016 dated 02.11.2016 and quash the same as illegal, without jurisdiction and un-sustainable.

2.The petitioner is the dealer for the products of ANIL Brands. He purchased the ANIL brand products from a local registered dealer and sold the same to the retailers within the State. The turn over of the petitioner is below Rs.50 lakhs and that he opted to pay tax under Section 3(4) of TNVAT Act. Since the petitioner's taxable turnover comes to Rs.40 lakhs, he paid tax at 0.5% under Section 3(4) of the Act. The petitioner submitted that he has not availed any other concession like ITC. On 24.04.2015 Enforcement Wing inspected the place of business of the petitioner and found that there was excess stock at Rs.32,588/- and hence, the petitioner’s assessment under Section 3 (4) is not correct and therefore, he is liable to pay at 14.5%.

3.The learned counsel for the petitioner submitted that at the time of inspection, the authorities found that the petitioner suppressed the first sale of Rs.32,588/- by adopting a gross profit of 5% as against the gross profit of 6% to 7% and even assuming that the inspection authority is correct, the turn over was only Rs.41.85 lakhs which is less than Rs.50 lakhs and hence, the petitioner need not pay tax as per Section 3(2). He further submitted that the respondent proceed on the basis that the petitioner’s opening stock as on 01.04.2014 was Rs.2,79,067/- and that the purchases for the year 2014 - 2015 was over and above Rs.50 lakhs and as the petitioner’s net purchase was above Rs.52

lakhs he is liable to pay tax at 14.5% and also reassessed the tax and after adjusting the amount directed the petitioner to pay the balance amount of Rs.5,67,212/- apart from imposing penalty under Section 27(3)(c) of the Act. He also drew the attention of this Court to the provisions of Section 3(2), 3(4), 2(38) and 2(41). Admittedly, Section 2(41) may not be applicable to this case and the respondent admitted that they have assessed the tax based on the taxable turnover as per Section 2(38) of the Tamil Nadu Value Added Tax Act, 2006.

4.In view of the above, the respondent would assess the tax only based on taxable turnover and not based on the whole turnover and the purchase during the period in question. The petitioner has already paid a sum of Rs.24,990/- at the rate of 0.5%, and that he has got alternative remedy. I find substantial grounds in favour of the petitioner, as to whether the petitioner's taxable turnover crossed Rs.50 lakhs or not is the matter for adjudication by the appellate authority. As per Section 51 of the Act remedy lies before the Appellate Deputy Commissioner, this Court without interfering with the impugned order dated 02.11.2013 directing the petitioner to deposit 25% of the total tax assessed after giving credit to the amount of Rs.24,990/- and directed to file an appeal within a period of 15 days from the date of receipt of a copy of this order. On filing such an appeal, the Appellate Authority shall entertain the appeal and decide the same within a period of two months from the date of filing of the appeal. There is no need for the petitioner to pay over and above 25% and also seek for waiver. Till the disposal of the appeal, no coercive action shall be taken.

5.The Writ petition is disposed of accordingly. No costs. Consequently, connected W.M.P.is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Papanasam Assessment Circle,
Papanasam,
Thanjavur District.
+1cc to Mr.K.Soundararajan,Advocate,SR No.82743
+1cc to Special Government Pleader,SR NO.83153

nbj
ms/pm.pn/15.2.2017/2p.4c