IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.1237 of 2017

M/s.Gurusamy Agencies,
rep. by its Proprietor,
No.4, A-1, Kumbakonam Road,
Panruti - 607 106. ... Appellant

Versus

Deputy Commercial Tax Officer,
Panruti (Town), Panruti ... Respondent

Writ Appeal filed against the order dated 07.06.2017 in W.P.No.4496 of 2017.

W.P.No.4496 of 2017 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in Assessment Order in TIN 33224481904/2015-16 dated24.10.2016 and quash the same as illegal and unconstitutional and also to direct the respondent to consider the Form K Submitted by the petitioner and pass fresh orders in accordance with law as provided under Sec.3(4) of the TNVAT Act.

For Appellant : Mr.R.Ganesh Kanna

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

Assessment order dated 24.10.2016, impugned in the writ petition is as follows:

PROCEEDINGS OF THE DEPUTY COMMERCIAL TAX OFFICER,
PANRUTI (TOWN)
Present: Tmt.P.USHARANI

TIN 33224481904/2015-16 Dated: 24.10.2016

Sub: TNVAT ACT 2006 - Return Scrutiny - Tvl.Gurusamy Agencies, Panruti - Assessment for the year 2015-16 - Notice issued - Orders passed.

Ref: This Office Notice in TIN 33224481904/2015-16, dated 15.9.2016.

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ORDER:-

Tvl.Gurusamy Agencies, Dealers in Biscuits (Branded) (CC 309), No.4A-1, Kumbakonam Road, Panruti, are a registered dealer in the books of this Office, having registration No.33224481904 under the TNVAT ACT 2006.

On verification made with the Commercial Taxes Department Website and from verification of the records available with the department, it is noticed that the dealers have effected purchase to a value of Rs.14,36,136.40 from Tvl.Narasimhalur Chettiar, TIN 33084480332 from April 2015 to March 2016 (Except for January 16) list of such purchases already furnished to the dealers.

But the dealers have not filed monthly returns declaring the above purchases and the corresponding sales in the monthly return and paid the tax due thereon for the year 2015-16 in this office till date of issue of notice on 15.9.2016.

From the above, it is evident that the dealers have willfully suppressed the purchase turnover and the corresponding sales turnover with an intention to evade the payment of tax to the Department.

It is therefore no other go to the department to assess on best of judgment based on the records available with the department.

In view of the above, it is hereby proposed to assess the dealer on best of judgment under Section 22 (4) of the TNVAT 2006 for the assessment year 2015-16 as detailed below:-

	14.5%
Purchase turnover amount on verification made in the website and other records available in the Department	16,44,368-00
Add: Freight at 2%	32,887-00
Total	16,77,255-00
ADD: Gross Profit at 10%	1,67,726-00
Deemed Sale Value arrived	18,44,981-00
Tax due	2,67,522-00

Total and taxable turnover proposed : Rs.18,44,981-00 at 14.5%

Tax due : Rs.2,67,522-00

Penalty under Section 22(5) of the TNVAT Act 2006:-

But for verification made with Commercial Taxes Department Website and other records available in the Department the purchase suppression would not come into the lapse of the department. Therefore levy of penalty under Section 22(5) of the TNVAT Act 2006 is as detailed below:-

Actual Sales Suppression	:	Rs.18,44,981-00
Tax effect	:	Rs. 2,67,522-00
Penalty at 150% of the tax due	:	Rs. 4,01,283-00

They were also provided with an opportunity of personal hearing besides the objection, if any. The dealers having received the notice have not filed any objection. They also appeared for personal hearing. But not given any evidence. But they simply filed monthly return in Form K manually prepared to the total sale value of Rs.16,74,000-00 at 0.5% under Rule 7(1)(d) read with Sec.3(4)(a) of the Act on 24.10.2016 only with cheque for tax amount of Rs.8,370-00. According to Rule 7(1)(d), such return should have been filed on or before 20th of the succeeding month to the assessing authority along with proof of payment of tax through e-filing. According to Rule 7(9) of TNVAT Rules, 2006 even revised return should have been filed within 6 months from the last day of the relevant period to which the return relates that too other than as a result of an inspection or audit or receipt of any other information or evidence by the assessing authority.

In this case the dealers filed returns in Form K after 6 months from the last day of the relevant period to which it relates, that too after knowing the details of purchases made by them from the assessing authority. Hence the returns filed by them in Form K will not be entertained at this stage.

I therefore, hereby assess the dealers under section 22(4) of TNVAT Act 2006, for the year 2015-16 on a total and taxable turnover of Rs.18,44,981-00 at 14.5% to the best of my judgment as follows:-

Tax due	:	Rs.2,67,522-00
Tax paid	:	Rs. 8,370-00
(-) Balance	:	Rs.2,59,152-00

A demand notice in Form 'O' is issued.

The dealers have not filed the monthly returns in time. But for cross verification the above actual sales suppression would not have come to light of the Department. In as much as the dealers made willful actual sales suppression with an intention to evade payments of tax deliberately, penalty of Rs.4,01,283-00 being 150% of the tax due of Rs.2,67,522-00 on the willful actual sales suppression of Rs.18,44,981-00 at 14.5% is levied under Section 22(5) of TNVAT Act 2006.

Penalty due : Rs.4,01,283-00
Penalty paid : Rs.Nil
Balance (-) : Rs.4,01,283-00
A demand notice in Form RR is issued

Deputy Commercial Tax Officer,
Panruti (Town)

2. When the said order was challenged, in W.P.No.4496 of 2017, giving liberty to the petitioner to approach the appellate forum, writ Court vide order dated 07.06.2017, disposed of the writ petition, granting three weeks time, from the date of passing of the order in the writ petition.

3. Though, Mr.R.Ganesh Kanna, learned counsel for the appellant made submissions assailing the correctness of the order of the writ Court, we are not inclined to accept the contentions. However, he came up with a request to grant a further time of three weeks to file a statutory appeal before the appellate authority. Therefore, while dismissing the appeal, time is extended to prefer a statutory appeal by three weeks, from today.

4. Writ appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Panruti(Town), Panruti.

+1cc to Mr.A.Ravichandran, Advocate, S.R.No.72316

W.A.No.1237 of 2017

SK(CO)
CA(09/10/2017)