IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31950 of 2017 & W.M.P.No.35097 of 2017

M/s.GKS Industries,
No.31A/3, Sidco Industrial Estate,
North Phase, Ambattur,
Chennai-600 098. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Patravakkam Assessment Circle,
No.127, 2nd Floor, Yadhaval Street,
Padi, Chennai-600 050.

2.Joint Commissioner (CT),
Enforcement (II), Chennai-600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the impugned notice in TIN/33101360122/2007-08 dated 13.11.2017 from the files of the first respondent herein, quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Mrs.Narmadha Sampath
Special Government Pleader

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O R D E R

Heard M/s.Aparna Nandakumar, learned counsel appearing for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the first respondent has filed this writ petition challenging the notice issued by the respondent dated 13.11.2017. The place of business of the petitioner was taken up for VAT audit under Section 64 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "the TNVAT Act") and at the time of audit, certain defects were found with regard to the reversal of input tax credit under Section 19(5)(c) and 19(4) of the TNVAT Act.

3.With regard to the reversals, which were proposed, the petitioner had admitted their liability and they have discharged the same by giving cheques for a sum of Rs.23,95,750/- and for a sum of Rs.22,125/- respectively. After the impugned show cause notice has been issued, the petitioner's contention is that the reason for payment of the tax before the audit officials was to purchase and that cannot be a starting point for issuing a notice under Section 27(4) of the TNVAT Act.

4.In support of such contention, the learned counsel placed reliance on the decision of this Court in the case of Tulsyan Nec Limited vs. Assistant Commissioner reported in [2015] 82 VST 63 (Mad) and contended that in the impugned notice no specific reason has been assigned as to under what circumstances penalty is leviable and therefore, the notice has to set aside.

5.In my considered view, the issue as to whether there was no wilful suppression of the turnover or not is a factual issue, which has to be determined by a process of adjudication. When such adjudication is taken up, if the petitioner is able to sustain their plea that there was no wilful suppression at any point of time and there was no deliberate failure on the part of the petitioner, then it is for the petitioner to establish the same before the respondents and such adjudication cannot be taken up in a writ petition.

6.Thus, for the above reasons, the writ petition is held to be not maintainable and the same is dismissed. The petitioner is directed to submit their objections to the impugned notice within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall consider the same, afford an opportunity of personal hearing to examine the stand taken by the petitioner and then pass a speaking order on merits and in accordance with law. It is needless to say that the first respondent shall pass orders uninfluenced by any observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner (ST),
   Patravakkam Assessment Circle,
   No.127, 2^{nd} Floor, Yadhaval Street,
   Padi, Chennai-600 050.

2.The Joint Commissioner (CT),
   Enforcement (II), Chennai-600 006.

+1cc to Mr.Aparna Nandakumar, Advocate, S.R.No.87614

W.P.No.31950 of 2017

RRK(11/12/2017)