IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2182 of 2017

and W.M.P.Nos.2155 and 2156 of 2017

Tvl.Sri Murugan Store,
Rep. By its proprietrix,
No.381/200, West Main Road,
Pennadam - 606 105. ... Petitioner

vs.

The Deputy Commercial Tax Officer (CT)(Main)
Virudhachalam. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records on the file of the respondent in TIN.33044424288/2014-15 dated 13.05.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such others writ order of direction as Honourable Court.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt Pleader (T)

O R D E R

1. Dispense with allowed, subject to just exceptions.

2. Issue notice. Mr.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent.

3. With the consent of counsel for the parties, the writ petition is taken up for final hearing and disposal.

4. By virtue of the instant writ petition, challenge is laid to the order dated 13.05.2016, whereby, the writ petitioner has been multed with tax amounting to Rs.61,382/- and penalty in the sum of Rs.92,073/-

5. A perusal of the impugned order would show that the respondent has proceeded to pass the said order on account of the variation in the information, which was available on the department website, and that which was reflected in the monthly returns filed on behalf of the petitioner. The respondent appears to have found fault in respect of purchases made by the petitioner in the sum of Rs.3,77,293/- from, one, Tvl.Ramco Cements. According to the respondent, though, information regarding this purchase was made available on the department website, it was not reflected in the monthly return filed by the petitioner. As a matter of fact, the respondent concludes that the petitioner did not file monthly return from August 2014 onwards.

6. Counsel for the petitioner points that there is a contradiction in the conclusion reached in the impugned order that no monthly returns was filed by the petitioner from August 2014, as in the very first paragraph of the impugned order, the respondent has indicated that the petitioner has filed monthly returns for the entire year i.e., 2014-2015.

6.1. It is also the submission of the learned counsel for the petitioner that the respondent could not have imposed tax and penalty on the petitioner, merely for the reason that there was a variation in the information as available on the Department website as against that which was reflected in the monthly return.

6.2. In support of this submission, the learned counsel for the petitioner seeks to rely upon the following judgments of this Court: (i)Althaf Shoes Private Limited Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6, [2012] 50 VST 179 (Mad); and (ii) Judgment dated 06.11.2014, passed in W.P.No.9265 of 2013, titled: Infiniti Wholesale Limited Vs. The Assistant Commissioner (CT), Koyambedu Assessment Circle, Market Management Committee Building, Koyambedu, Chennai - 600 107.

7. Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent on the other hand says that the petitioner was issued a notice dated 28.03.2016, proposing to levy of tax and penalty in view of the purported suppression of purchase made. Learned counsel further submits that the said notice was not responded to by the petitioner, and therefore, the respondent had no choice but to confirm the proposal for levy of tax and penalty. Mr.Kanmani Annamalai, further submits that he cannot but accept the fact that the judgments referred to by the petitioner were binding on the respondent.

8. I have heard the learned counsel for the parties and perused the records. Clearly there is an contradiction in the impugned order. On the one hand, the respondent says that all monthly returns for the year 2014-2015 were filed by the petitioner and on the other hand, he holds that no monthly returns were filed. Furthermore, the respondent, proceeds to impose tax and penalty based on mismatch in information. This Court, has repeatedly, held that mismatch in information cannot be the sole basis for imposing tax and penalty. In case, respondent was desirous of confirming the proposal, he should have in the very least supplied the material particulars to the petitioner.

9. In these circumstances, the impugned order is set aside with the liberty to the respondent to redo the assessment, after putting to the petitioner all material facts.

10. The writ petition is, thus, disposed of in the aforementioned terms. Resultantly, the connected application is closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

The Deputy Commercial Tax Officer (CT)
Virudhachalam.

+1cc to Mr.Ravichandran, Advocate, S.R.No.6341
+1cc to the Government Pleader, S.R.No.5979

VGJ(CO)
RS(17/02/2017)