IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.12.2017

CORAM

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

W.P.No.33485 of 2017
and WM.P.No.36995 of 2017

M/s.Delphi Automotive Systems P Ltd.,
Rep. by its Authorised Signatory
Mr.Manoj Kochkunju Chacko
No.14, Thiruneeramalai Main Road
Chrompet, Chennai 600 044. ...Petitioner

Vs.

The Assistant Commissioner (CT)
Pammal Assessment Circle,
No.32, & 33, Sripuram 2nd Street
Chrompet, Chennai 600 044. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN 33160887990/2015-16 quash the order dated 10.11.2017 and further direct the respondent to follow the procedure under Section 27(1) of the Tamil Nadu Value Added Tax Act, 2006 by conducting and enquiry by calling for the books of accounts and connected records and thereafter determine the turnover which had escaped assessment under the Act.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.S.Kanmanai Annamalai
Additional Government Pleader

O R D E R

Heard Mr.V.Sundareswaran,learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “TNVAT Act”) is aggrieved by an order of assessment passed by the respondent dated 10.11.2017 for the assessment year 2015-2016.

3.Learned counsel for the petitioner made elaborate submissions to justify the ground of challenge that the respondent is not empowered to invoke Section 27 of the TNVAT Act for making reassessment on the alleged escaped turnover without following the procedure under the said provision. Further, it is submitted that admittedly there is no tax payable on import or interstate purchases, there is no jurisdiction for the respondent to make estimation by adding 15% towards gross profit by presuming that they were sold by treating the alleged estimated sales suppression, more so when the same is reported and tax paid on the sales. Further, it is submitted that the respondent is not entitled to make an estimation of the alleged sales by adding 15% towards the alleged purchases by way of import when admittedly the same reported and sales tax paid. Learned counsel also drawn the attention of this Court for the observations made by the Assessing Officer and submitted that no enquiry was conducted, books of accounts were not called for and facts were not verified, etc.

4. For the purpose of adjudicating the correctness of the stand taken by the petitioner in this writ petition, necessarily the disputed questions of fact have to be gone into. In the instant case, the petitioner has raised various factual issues and disputed the observations and findings recorded by the Assessing Officer. Therefore, without analyzing the factual matrix, it cannot be considered as to whether the respondent was justified in invoking Section 27 of the TNVAT Act. Therefore, necessarily the petitioner has to avail the appellate remedy available under the TNVAT Act which is not only efficacious but also effective. Merely because the statute mandates a pre-deposit is no ground to bypass the appellate remedy. It is further submitted that there is absolutely no basis for levying penalty under Section 274(3) of the TNVAT Act. This ground can also be canvassed before the appellate authority by raising all contentions.

5. Thus, for the above reasons, the writ petition is held to be not maintainable and accordingly, dismissed. The petitioner is at liberty to file an appeal as against the impugned order on or before 12.01.2018 and if such an appeal is filed within the said date, the appeal shall not be rejected on the ground of limitation. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

dna/cse

To

The Assistant Commissioner (CT)
Pammal Assessment Circle,
No.32, & 33, Sripuram 2nd Street
Chrompet, Chennai 600 044.

+1 CC to Spl. Govt. Pleader(T) sr 91914
+1 CC to Mr. Sundareswaran,Advocate sr 92392.(27/12/2017)

W.P.No.33485 of 2017

SP(22/12/2017)