IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18003 of 2010 & M.P.No.1 of 2010

M/s.Ajay Trading,
#548/66, Agrahara Street,
Erode-638 001. ... Petitioner

Vs.

Assistant Commissioner (CT),
Netaji Road Assessment Circle,
Sales Tax Office Buildings,
Brough Road, Erode-638 001. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings issued by the respondent herein in TIN No.33962880900/2006-07 & 2007-08 dated 22.07.2010, received on 29.07.2010, quash the same and direct the respondent herein to accept the monthly returns in Form 'K' filed by the petitioner herein.

For Petitioner : M/s.Aparna Nandakumar

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard M/s.Aparna Nandakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.This writ petition has been filed challenging the proceedings of the respondent dated 22.07.2010, whereby the respondent rejected the Form K returns filed by the petitioner. The facts, which are necessary for the disposal of the writ petition are as follows.

3.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as “the TNGST Act”) dealing in sale of electrical goods. The petitioner's turnover was less than Rs.50,00,000/- and therefore, exercised option under Section 3(4)(a)(ii) of the TNGST Act and filed those returns. However, while filing the returns, the petitioner filed the same in Form I and not in Form K. Form I returns are returns to be filed by dealer, who did not claim for payment of tax under Section 3(4)(a) of the TNGST Act. The returns were processed under Section 22(2) of the TNGST Act and they have been accepted. Subsequently, the assessing officer issued notices dated 31.05.2010. In the said notices, the assessing officer does not dispute that the petitioner's turnover is Rs.24,02,403/- for the assessment year 2006-07 and Rs.14,38,858/- for the assessment year 2007-08, but was guided by the form of return and stated that the petitioner, should pay tax at 12.5%, as the petitioner has not exercised option to pay tax under Section 3(4)(a) of the TNGST Act. The petitioner on receiving the notices, immediately filed Form K returns and represented before the authorities stating that their turnover was less than Rs.50,00,000/- and they had remitted tax by exercising option under Section 3(4)(a) of the TNGST Act. Due to over sight, they had filed returns in Form I and they have requested to accept the Form K return and to treat them as revised returns. This request has been rejected by the impugned order.

4.Admittedly, under the provisions of the TNVAT Act, no specific procedure has been prescribed for exercising option under Section 3(4)(a) of the TNGST Act, that is, there is no statutory form prescribed for exercising such option. Therefore, the exercise of such option should be by way of a return.

5.According to the petitioner, they had exercised option inadvertently and filed Form I returns, which have to be filed in cases where regular assessment procedures have to be followed. This came to the petitioner notice only when the respondent sought to demand higher rate of tax by issuing notice dated 31.05.2010. On receipt of the said notice, the petitioner immediately rectified the mistake and filed Form K returns. However, the respondent without rejecting the Form K returns could have verified the turnover of the petitioner and then taken a decision. The respondent was well within his powers to do so, in the light of the powers conferred on the respondent under Section 84 of the TNGST Act. Therefore, this Court found that this is a fit case, where the Form K returns has to be accepted and processed.

6.Under normal circumstances, the matter should be remitted back to the respondent for fresh consideration. However, for two reasons, this Court does not propose to do so. Firstly, the turnover for the both the assessment years has been below limit of Rs.50,00,000/- and this was admitted by the respondent in the notice dated 31.05.2010, wherein the turnover for 2006-07 has been mentioned as Rs.24,02,403/- and the turnover for 2007-08 has been mentioned as Rs.14,38,858/-. Therefore, merely because the petitioner had filed Form I return, such return cannot be a reason to demand tax at 12.5%. Therefore, the matter need not be remanded to the respondent for fresh consideration. Secondly, the dealer is no more and even at the time when the present writ petition was filed, he was about 90 years. Therefore, it is best that the matter is given a quietus by this Court in this writ petition.

Thus, for the above reasons, this writ petition is allowed and the impugned proceedings are quashed. No costs. Consequently, connected miscellaneous petition is closed.

abr

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Netaji Road Assessment Circle,
Sales Tax Office Buildings,
Brough Road, Erode-638 001.

+1cc to Special Government Pleader SR.No.90370
+1cc to Ms.Aparna Nadakumar, Advocate SR.No.90075

sm:8.1.2018

W.P.No.18003 of 2010