BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.07.2017
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.329 of 2017
and
C.M.P.(MD).No.3304 of 2017

Tvl.G.Selvakumar and Brother,
Represented by its Partner,
G.V.Vadamalai Rajan, aged about 56 years,
S/o.R.M.Guruswamy,
No.53-B, Moundspuram 4^{th} lane
Dindigul. .. Appellant

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT)-III,
Dindigul III Assessment Circle,
Commercial Taxes Buildings,
Sub Collector's Office Road,
Dindigul - 624 001. .. Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 26.08.2016 in W.P(MD).No. 15932 of 2016, on the file of this Court.

Prayer in WP(MD). 15932/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33155240240/2014-15 dated 30.06.2016 and quash the same.

For Appellant : Mr.B.Rooban
For respondents : Mr.Mr.R.Karthikeyan
Additional Government Pleader

JUDGMENT
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[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

This intra-Court appeal is directed against the order dated 26.08.2016 in W.P.(MD).No.15932 of 2016.

2. The writ petition filed by the appellant was dismissed with a direction to approach the Appellate Authority, if he is so advised.

3. The learned counsel for the appellant contended that there is only a question of law involved in the matter and as such, it is always open to the Writ Court to entertain the Writ Petition. According to the learned counsel, since only a pure question of law is involved in the subject matter, the Writ Petition is maintainable.

4.The second respondent issued a pre-revision notice to the appellant on 19.10.2015. In the said notice, the second respondent contended that the exemption claimed on the sale of goods is not proper and the assessment shall be made at 5 % under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "Act").

5.The second respondent also indicated that penalty at 150 % of the tax has to be collected, as it would attract Section 22 (5) of the Act. The explanation given by the appellant was not accepted by the Assessing Authority and the same resulted in passing the Assessment Order dated 30.06.2016.

6.The appellant, without availing the statutory remedy, filed the Writ Petition before the Writ Court. The learned single Judge was of the view that there is an alternative remedy available to the appellant and as such, the remedy is only to approach the Appellate Authority. The order passed by the second respondent dated 30.06.2016 was challenged in the Writ Petition.

7. The Assessing Officer, in his order dated 30.06.2016, very clearly indicated as to why he is not accepting the case of the appellant on facts as well as on law. Since disputed question of the law is involved and there is an alternative remedy available to the appellant, the learned single Judge was absolutely correct in dismissing the Writ Petition. We do not find any error in the order passed by the Writ Court warranting interference.

8. In the result, the intra-Court appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT)-III,
Dindigul III Assessment Circle,
Commercial Taxes Buildings,
Sub Collector's Office Road,
Dindigul - 624 001.

+One cc to Mr.B.Rooban, Advocate, SR.No.63647

NB/dsk
RL/4C/3P/KK/SAR1/25/7/2017

JUDGMENT MADE IN

W.A(MD)No.329 of 2017
and
C.M.P.(MD).No.3304 of 2017

06.07.2017