BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.1740 of 2017
and
WMP(MD)No.1418 of 2017

Tvl.Shri Siddhi Vinayaga Tex India (P) Ltd.,
Rep. by its Director R.T.Sivakumar,
Ottanagampatty, Vedasandur Road,
Vedasandur, Dindigul District. ... Petitioner

-vs-

The Additional Commercial Tax Officer,
Dindigul (Rural) Assessment Circle,
Dindigul. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for records in TIN: 33305263098 for the assessment year 2014-2015 on the file of the respondent dated 15.12.2016 and quash the same as illegal and error of law and direct the respondent to pass the order in accordance with law by considering the documents submitted by the petitioner at the time of personal hearing.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.R.Karthikeyan
Addl. Govt. Pleader

O R D E R

This writ petition has been filed, seeking to quash the order of the respondent dated 15.12.2016 passed in TIN: 33305263098 for the assessment year 2014-2015, by which it has been decided to impose penalty. The petitioner also sought a direction to the respondent to pass an order in accordance with law by considering the documents submitted by the petitioner at the time of personal hearing.

2. According to the petitioner, even though he has produced documents and bills, it has been observed in the impugned order that the petitioner / dealer has not produced the summary of the sale invoice and therefore, there is a total non application of mind. The petitioner would submit that the observation in the order is only cryptic and the levy of penalty under the VAT Act is unwarranted. It is the further submission of the petitioner that the impugned order has been passed contrary to law, that this Court can interfere with the order and there is no need for the petitioner to exhaust the appellate remedy.

3. In response to the above submission, the respondent, though no counter has been filed, would contend that normally, this Court can interfere with the order passed by the respondent only on two grounds, namely, a) the order passed is without jurisdiction and b) there is a violation of principles of natural justice. In this case, a detailed order, running to 16 pages, has been passed by the respondent after affording due opportunity to the petitioner and therefore, it cannot be said that no opportunity was provided to the petitioner. It is further contended that even assuming for the sake of argument that there is an observation in the order that the petitioner / dealer has not adduced the summary of the sale invoice even after receipt of the same, it is for the petitioner to establish the real factum before the Appellate Authority and nothing prevented the petitioner to do so. The further contention raised by the respondent is that the petitioner has not produced the original copies of documents in respect of exempted purchase difference of Rs.68,16,79,524/-.

4. I find much force in the contention raised by the respondent that since a detailed order has been passed by the respondent, it cannot be said that the order passed is without jurisdiction and there is also no violation of principles of natural justice. Even if the contention of the petitioner is accepted that the order is contrary to law and this Court can interfere with the order, admittedly, in this case, there is no provision of law, which could be said to be violative, calling for interference by this Court. It is for the Appellate Deputy Commissioner of Commercial Taxes to look into those aspects and therefore, the remedy available to the petitioner is only by way of filing appeal and not otherwise. Hence, this Court is of the view that the revision order passed under Section 27 of the TNVAT Act, 2006 cannot be interfered with by this Court.

5. Therefore, this writ petition is dismissed and this order will not preclude the petitioner to approach the appellate forum, if so advised and if any such appeal is filed, the Appellate Authority shall entertain the same and decide the same in

accordance with law within four months thereafter. It is made clear that the observation made hereinabove is only for the purpose of disposal of this writ petition and the same cannot be taken as a precedent to decide the appeal if any filed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

The Additional Commercial Tax Officer,
Dindigul (Rural) Assessment Circle,
Dindigul.

+1 cc to MR.S.KARUNAKAR, Advocate SR.No.6815
+1 cc to Special Government Pleader SR.No.6619

W.P.(MD) No.1740 of 2017
06.02.2017

SMA/RSK/17.02.2017:3P/4C