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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.3454 of 2011
and
W.M.P.(MD)No.1 of 2011

Tv.Famous Tiles Park,
Represented by its Partner Thiru.C.C.Chandramohan,
D.No.13/165-5, Selvavinayaga Puram,
Pavoor Chatrum,
Pavoor Chatram Branch at 24-B-2,
S.N.High Road,
Tirunelveli. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (C.T.) (FAC),
Tenkasi,
Tirunelveli District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the proceedings passed in TIN 33345683959/2010-11 dt. 28.12.2010 received by the petitioner on 06.01.2011 and quash the same and to direct the second respondent to consider the advance tax paid by the petitioner for adjustment of the same in the monthly return for the month of October, 2010.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.Rajakarthikeyan
Additional Government Pleader

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ORDER

This Writ Petition has been filed challenging the order dated 28.12.2010 in TIN 33345683959/2010-11, passed by the second respondent, which according to the petitioner, was received by it on 06.01.2011.

2.Learned Additional Government Pleader appearing for the respondents submits that the petitioner had an alternative remedy of filing a revision under Section 54 of TNVAT Act within 30 days from the date on which the order had been served on the petitioner and the Revisional Authority was clothed with the power to excuse the delay in filing such revision for another period of 30 days thereafter, which had lapsed on 06.03.2011 in the present case. It is pointed out that the said remedy had not been availed and instead the petitioner has approached this Court only on 22.03.2011, after that period had lapsed.

3.When confronted with the aforesaid question of limitation in entertaining the writ petition impeded by statute and explain the error in the impugned order, the learned counsel for the petitioner urged that the only grievance of the petitioner is that the objection made by the petitioner by way of reply dated 14.12.2010 had not been considered by the second respondent before passing the impugned order, which is in violation of the principles of natural justice.

4.This Court has considered the rival submissions and perused the materials available on record.

5.The objection of the petitioner in the aforesaid reply is set out below:-

> "We are submitting our reply to the above notice.
> At the time of Audit in our business place on 11/10/210, there was a stock deficit for Rs.22,45,288 which was admitted including profit as sale value for Rs.24,69,817/- and tax due thereon paid was Rs.3,08,727/-.
> The sale value of deficit stock was omission sale and the same was accounted for in our books in the month of October 2010 itself. We have reported the sale of goods of deficit stock (Rs.24,69,817/-) in the FORM I Return for October 2010 on 20.11.2010. The tax paid in advance has to be adjusted in FORM I in accordance with Rule 7(1)(a).
> "The Stock variations were brought to accounts after the inspection or verification. Once the goods of stock found to be deficit were brought to accounts before the assessment, the question of working out the actual suppression does not arise."
> The Madras High Court decided the above findings in "3 MTCR 82 (Madras) Dtd. 08/09/1992 in the case of Dy. Commissioner CT Vs. Jomraj Hardwares".

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Hence, we submit that the payment of tax of Rs.3,08,727 was adjusted as per VAT Rule 7(a) (i) in FORM - I for October 2010. Hence there is no omission or suppression while submitting our Monthly VAT RETURN. Further, we state that the above said amount was not mentioned in the Adjustment column of Advance tax in the E-Return for October 2010 by inadvertently. We regret for this mistake.

Therefore, we request your kindself that the tax paid during the Audit of Rs.3,08,727/- may kindly be allowed as Advance Tax and adjusted accordingly."

6.On a perusal of the impugned order, it is noticed that the aforesaid objection by the petitioner had been duly considered the same and findings in that regard has been rendered, which is as follows:-

"I have carefully examined their reply,

A comparisons of monthly returns filed for October 2010 inter the other returns filed during the prevision period by the year 2010-2011 it was revealed that the dealers had not added the sale value or deficit stock of goods along with the monthly sale turnover, since their average monthly sales tax itself accounted to amount of Rs.2.5 lakh. They also filed Annexure-II for the sales effected during October 2011.

They worked out the output tax due on the sales effected as per Annexure - II for Rs.29,50,847/- only. They have not brought the stock variation into Annexure-II and worked out the tax due thereon as stated by the dealer in their reply. But worked out the tax due for the actual sales effected during the month.

Hence their adjustment of tax of Rs.3,08,727/- paid due to stock deficit could not be adjusted towards the monthly tax due.

In the above position, their reply is not convincing and they are directed to pay the above balance of Rs.3,08,727/- along with the interest payable under section 42(3) of VAT Act 2006."

Hence, it cannot be said that the second respondent had not considered the objections of the petitioner, amounting to violation of natural justice requiring interference of this Court in exercise of the discretionary powers under Article 226 of the Constitution of India. Further, when the statutory remedy available stands barred by limitation even at the time of filing of the writ petition, it would be without any justification to entertain a Writ Petition against such order. In these circumstances, this Court does not find any merits in the Writ Petition and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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8.It is represented by the learned counsel for the petitioner that an interim order had been passed on 24.03.2011, directing the petitioner to pay 30% of the demand made by the respondents within 6 weeks from that date as a condition for granting interim order, but neither the learned counsel for the petitioner nor the learned Additional Government Pleader appearing for the respondents is in a position to produce any material to show that the said condition has been complied with. As such, if the said amount has been remitted by the petitioner, the same shall be adjusted by the respondents while recovering the amount payable by the petitioner in terms of the impugned order.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (C.T.) (FAC),
Tenkasi,
Tirunelveli District.

+1cc to Special Government Pleader, SR.No. 89603
+1cc to M/S.A.S.Mujibur Rahman, Advocate SR.No. 89473

W.P.(MD)No.3454 of 2011

sj
JM/SV MMS/SAR 1/22.12.2017/4P/5C

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