IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.737 of 2018
and
W.M.P.No.899 of 2018

M/s.M.M.Sign Vision,
represented by its Partner,
E.V.Murali. ... Petitioner

Vs.

The Assistant Commissioner (ST)
Sankari Assessmenet Circle
Sankari
Salem District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent herein pertaining to the impugned attachment order and Form 'U' notice bearing R.O.C.No.1111/2017/A3, dated 19.09.2017 in TIN No.33783228356 and to quash the same, consequently to release the bank attachment.

For Petitioner : Mr.V.Meenakshisundaram

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.V.Meenakshisundaram, the learned counsel appearing for the petitioner and Mr.M.Hariharan, the learned Additional Government Pleader, accepting notice on behalf of the respondent. With consent on either side, the Writ Petition is taken up for disposal.

2. The petitioner, who is a 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 the attachment notice issued by the respondent, by which, the petitioner's bank account for recovery of the tax and penalty, as levied by him, in the assessment orders, dated 12.04.2017 and 17.04.2017, for the assessment years 2014-15 and 2015-16 respectively, has been attached.

3. The only issue, involved in this Writ Petition is to find out, as to what is the rate of tax payable by the petitioner.

4. The respondent has been charged tax at the rate of 14.5% on the ground that the petitioner has not produced requisite certificate, viz., the Industrial Input Certificate, as required to be produced in terms of the Clarification issued by the Authority for Clarification and Advance Ruling, dated 30.12.2016. The petitioner throws the blame upon the authorized representative engaged by them to represent them before the Assessing Officer. The petitioner would state that, they had entrusted with the authorized representative all documents and were under the earnest belief that he would have produced the same before the Assessing Officer, and if there were any defects, in those certificates, then, he should brought them back to the petitioner for necessary rectification. However, the trust and confidence reposed by the petitioner on the authorized representative proved to be wrong, as he did not live up to their expectation and left the petitioner in lurch. This has resulted in the assessment orders. Even thereafter, the petitioner did not approach the Authority, by way of Petition under Section 84 of the TNVAT Act, requesting for rectification, which according to them, required to be done in the light of the Industrial Input Certificate, which are in their custody.

5. The learned Additional Government Pleader for the respondent pointed out that the Industrial Input Certificate is not in the proper format, and it is rather doubtful as to whether, it can be accepted by the Assessing Officer. However, this has to be considered by the Assessing Officer, but, however, if the petitioner is in possession of the documents to the effect that they are entitled to pay tax only at the rate of 5%, the Court does not propose to deny that opportunity to the petitioner, that too, on account of the default alleged to have been committed by their authorized representative. By way of impugned bank attachment, a sum of Rs.4,50,000/- has already been recovered by the Department.

6. From a perusal of the order of assessment, it is seen that, the total tax demand computed at the rate of 14.5% works out to Rs.21,03,136/-. Therefore, for the bank attachment to be lifted, the petitioner has to be put on further condition. Accordingly, the petitioner is directed to pay a sum of Rs.5,00,000/- to the respondent, after which, the bank attachment shall be lifted, and if the amount is paid, the petitioner is entitled to file a Petition under Section 84 of the TNVAT Act and submit the original Industrial Input Certificate in the proper format, which shall be verified by the respondent for its admissibility, authenticity and other matters and then, proceed to decide the matter afresh in accordance with law.

7. With these observations, this Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

msm/sd

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Sankari Assessmenet Circle
Sankari
Salem District.

+1cc to Mr.V.Meenakshi Sundaram, Advocate Sr.No.3456
+1cc to special Government Pleader Sr.no.3909

NM(CO)
sm:15.2.2018

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