

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3212 of 2011

and

M.P.No.1 of 2011

M/s.F.M.Sales & Marketing,
Represented by its Proprietor,
Ramesh Kumar M.Jain,
Old No.61, Krishnappa Agraharam,
Kondithiope,
Chennai - 600 079 ..Petitioner

Versus

1. The State of Tamil Nadu, represented by its
Secretary, Commercial Taxes Department,
Fort St.George,
Chennai - 600 009.
- 2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam,
Chepauk, Chennai - 600 005.
- 3.The Joint Commissioner (Enforcement Wing),
(Central), Greams Road,
Chennai - 600 006.
- 4.The Deputy Commercial Tax Officer,
Roving Squad-II,
Enforcement (North),
Chennai - 600 006.
5. The Commercial Tax Officer,
Vallalarnagar Assessment Circle,
Second Line Beach,
Angappa Naicken Street,
Chennai - 600 001. ..Respondents

PRAYER:Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorari, to call for the
records on the files of the 4th respondent in G.D.No.1849/2010-
11/R.S.II/N dated 30.12.2010 and connected notice in
G.D.No.1849/2010-11 dated 14.01.2011 received on 25.01.2011 and
quash the same as being contrary to the notification issued by

the Government of Tamil Nadu in G.O.Ms.No.149 dated 12.10.2009 and contrary to the order passed by the revisional authority in R.P.No.11/2010 dated 5.6.2010.

For Petitioner ::Mr.R.Senniappan
For Respondents ::Mr.Hariharan, Govt. Advocate (T)

ORDER

This Writ Petition has been filed to call for the records on the file of the fourth respondent in G.D.No.1849/2010-11/R.S.II/N, dated 30.12.2010 and connected notice in G.D.No.1849/2010-11 dated 14.01.2011 received on 25.01.2011 and quash the same as being contrary to the notification issued by the Government of Tamil Nadu in G.O.Ms.No.149, dated 12.10.2009 and contrary to the order passed by the revisional authority in R.P.No.11/2010 dated 5.6.2010.

2. According to the petitioner, the petitioner's consignment was detained by the fourth respondent and thereafter, the consignment was released by the authority on payment of 50% of the demand amount pursuant to the order passed by this Court and the petitioner is challenging the demand notice issued by the fourth respondent before this Court.

3. The learned Government Advocate appearing for the respondents would submit that the Writ Petitioner has moved this Court without exercising the alternative remedy as against the order passed under Section 68/69 of the Tamil Nadu Value Added Tax Act (TNVAT Act). Therefore, the petitioner has to only approach the revisional authority. According to the learned Government Advocate, the factual dispute has to be raised before the revisional authority. Therefore, the petitioner has to approach the revisional authority and seek the remedy.

4. In view of the above submission made by the learned Government Advocate, the petitioner has to approach the revisional authority and seek remedy under Section 57 of the TNVAT Act. Hence, the following order is passed:

i) It is open to the Writ Petitioner to file revision petition before the revisional authority within a period of three weeks from the date of receipt of a copy of this order.

ii) If such revision petition is filed, the revisional authority shall consider the said revision petition and pass appropriate orders on merits and in accordance with law, and by also taking note of the order already passed by the Joint Commissioner (CT) Salem, dated 05.06.2010.

(iii) Pending the present Writ Petition, the petitioner has obtained interim stay before this Court. Taking note of the order of interim stay, the impugned order shall be kept in abeyance till the decision is taken by the revisional authority, in the event of the petitioner filing the said revision petition within the above said time.

5. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The State of Tamil Nadu, represented by its Secretary, Commercial Taxes Department, Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.
- 3.The Joint Commissioner (Enforcement Wing), (Central), Greams Road, Chennai - 600 006.
- 4.The Deputy Commercial Tax Officer, Roving Squad-II, Enforcement (North), Chennai - 600 006.
5. The Commercial Tax Officer, Vallalarnagar Assessment Circle, Second Line Beach, Angappa Naicken Street, Chennai - 600 001.

+1 CC to Mr.R.Senniappan, Advocate sr 82773.
+1 CC to Spl. Govt. Pleader sr 83213.

W.P.No.3212 of 2011 and
M.P.No.1 of 2011

NM(CO
SP(02/01/2019)