IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10690 of 2013 & M.P.No.1 of 2013

Sre Sai Builders, rep. by its
Proprietor, Mr.L.Balamurugan,
No.3/100, Ragavendra Complex,
VIP Colony, K.Vadamadurai Post,
Thudiyalur, Coimbatore-641 017. ... Petitioner

Vs.

The Assistant Commissioner (CT),
O/o Commercial Tax Office,
Thudiyalur Assessment Circle,
Coimbatore-641 017. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the record of the proceedings of the respondent in Ref No.1631/2012-13 and quash the proceedings dated 25.03.2013, as ex-facie, illegal and contrary to the provisions of the TNVAT Act, 2006 and the Rules framed thereunder besides being contrary to the principles of natural justice and further direct the respondent to pass regular assessment order for the assessment year 2012-13 on the basis of the returns filed by the petitioner under the provisions of Section 6 of the Tamil Nadu Value Added Tax Act, 2006 in accordance with law.

For Petitioner : M/s.C.Rekha Kumari

For Respondents: Mrs.G.Dhanamadhri,
Government Advocate

O R D E R

Heard M/s.C.Rekha Kumari, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent and carefully perused the materials placed on record including the counter affidavit.

2.The petitioner has impugned the order passed by the respondent dated 25.03.2013, by which the petitioner's petition filed under Section 22(6) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”) has been rejected. Admittedly, when inspection was conducted in the place of business of the petitioner, they were not registered, but, immediately thereafter, the petitioner obtained registration with effect from 28.11.2012. However, the respondent while completing the assessment and passing the assessment order dated 29.01.2013, well before the completion of the assessment year, stated that the petitioner is an unregistered dealer. This finding is factually incorrect. However, the respondent has accepted this fact in the counter affidavit in paragraph 3 stating that the petitioner is a registered dealer with effect from 28.11.2012.

3.In any event, the defect, which has crept in the assessment order dated 29.01.2013, describing the petitioner as an unregistered dealer is incorrect. The petitioner within a period of thirty days from the date of receipt of the assessment order, filed a petition under Section 22(6) of the TNVAT Act and requested the respondent to re-do the assessment. Soon after the petitioner was registered as a dealer, they had filed returns in Form L and also remitted tax, when the respondent has rejected the petition filed under Section 22(6) of the TNVAT Act. In the petition filed under Section 22(6) of the TNVAT Act, the petitioner in paragraph D has stated as to what prevented them from getting themselves as registered dealers.

4.In my considered view, this explanation can be accepted as being reasonable cause for not being able to file the returns in time. Considering the fact that the petitioner has immediately got themselves registered soon after the inspection and paid taxes, this is a fit case where the respondent should consider the petition filed under Section 22(6) of the TNVAT Act, consider the returns filed by the petitioner and re-do the assessment for the full year.

5.Thus, for the above reasons, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent, who shall consider the petitioner's petition filed under Section 22(6) of the TNVAT Act dated 06.03.2013, and re-do the assessment for the entire year 2012-13 after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT),
O/o Commercial Tax Office,
Thudiyalur Assessment Circle,
Coimbatore-641 017.

+1cc to M/s.C.Rekha Kumari, Advocate, S.R.No.1348

+1cc to the Government Pleader, S.R.No.1392

W.P.No.10690 of 2013

NRJK(CO)
RRK(05/02/2018)