BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11622 of 2017
and
W.M.P(MD)No.8947 of 2017

Tvl.Thermo Solutions (India) Private Ltd.,
Represented by its Director,
V.Suresh Kannan, aged about 46 years,
S/o.Velayutham,
No.12-A, SIDCO Industrial Estate,
Dindigul-624 001. ...Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer-V,
Dindigul-V Assessment Circle
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul-624 001. ..Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN:33495381964/2015-16, dated 30.06.2016 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

The Prayer sought for in the writ petition is for a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN:33495381964/2015-16, dated 30.06.2016 and quash the same.

2.The petitioner is an assessee registered with the second respondent. The petitioner is obliged to file the monthly returns electronically. But he did not do so for the months of October and

November. He appears to have filed monthly returns for these two months on the last date that too manually. Be that as it may, the Department cannot take note of such monthly returns. The second respondent issued notices, dated 23.11.2015 and 23.12.2015 calling upon the petitioner to file electronic returns along with compounding fees. The writ petitioner did not respond. Therefore, the impugned order, dated 30.06.2016 came to be passed in respect of those two months namely October 2015 and November 2014. The same is challenged in this writ petition.

3.Heard the learned counsel appearing on either side.

4. A over all reading of the statutory scheme set out in Tamil Nadu Value Added Tax Act, 2006, indicates that Section 25 of the said Act does not empower the Assessing Authority to invoke the said provision after expiry of the assessment year. In this case, the impugned orders pertains to the months of October and November 2015. In fact, the notices were issued in November 2015 and December 2015 itself. Therefore, the Assessing Authority ought to have passed orders under Section 25 of the said Act before conclusion of the assessment year. In this case, the order came to be passed on 30.06.2016 after the assessment year was already over. Therefore, in such a case, the Assessing Authority must pass the Assessment order for the whole year.

5.In this view of the matter, the order impugned in the writ petition is set aside. Accordingly, the writ petition is allowed and the second respondent is directed to pass the assessment order for the whole year under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006. The writ petitioner had already paid 50% of the amount demanded vide impugned order. The same shall remain with the second respondent and that will be subject to the out come of the assessment proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal & Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer-V,
Dindigul-V Assessment Circle
Commercial Tax Building,
Sub-Collector's Office Road,
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TR/SKN/SAR-1 (31.01.2019) 3P 3C