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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.25271 of 2018
and
W.M.P.(MD)Nos.22873 and 22874 of 2018

M/s.City Centre,
Represented by its Proprietor Mohammed Sheriff,
76, Near Police Colony, Tiruchendur Road,
Palayamkottai,
Tirunelveli-627 002. ... Petitioner

Vs.

The Assistant Commissioner (CT)(FAC).,
Palayamkottai Assessment Circle,
Commercial Tax Buildings,
Palayamkottai,
Tirunelveli. ... 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 in TN33175564985/2014-2015, dated 29.12.2015 and proceedings dated 24.09.2018 issued by the respondent in Roc.1398/2018/A6 and quash both as illegal, arbitrary and further direct the respondent to pass an order afresh by considering the application dated 05.09.2018 filed by the petitioner under Section 84 of the TNVAT Act, 2006 after affording reasonable opportunity of being heard to the petitioner within such time as may be directed by this Court.

For Petitioner :Mr.S.Karunakar
For Respondent : Mr.K.M.Muthu
Additional Government Pleader

ORDER

The petitioner who is an assessee, has registered with the respondent. The case on hand pertains to the assessment year 2014-2015. The goods dealt with by the petitioner have been assessed at 14.5 % by the respondent.

2.According to the respondent, the petitioner's goods fall under item No.3 part “C” of the first schedule. But according to the assessee, only 5% tax should be levied, since it falls under Item No.67 part “B” of the first schedule. It is an industrial input used for the manufacture of goods. The petitioner was visited with an order dated 29.12.2015. The petitioner filed an application

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under Section 84 of TNVAT Act, 2006 only on 05.09.2018. The respondent took the view that the petitioner must have filed a statutory appeal and declined to consider the petitioner's application. To this effect, the proceedings dated 24.09.2018 was issued which is under challenge.

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3.This Court cannot countenance a challenge to the order dated 29.12.2015 at this point of time. However, this Court has to accept the contention of the learned counsel for the petitioner that an application filed under Section 84 of the TNVAT Act, 2006, will have to be dealt with on merits. Therefore, the order dated 24.09.2018 alone is set aside. The respondent Assessing Officer shall deal with the petitioner's application filed under Section 84 of TNVAT Act, 2006 on merits and in accordance with law. The respondent shall also hear the petitioner before passing final orders.

4.In the result, the writ petition is partly allowed. Since this Court has directed the respondent to pass orders, on merits, on the petitioner's application, dated 05.09.2018, the attachment order will have to be set aside. However, in view of the long delay committed by the petitioner in filing the said application, the petitioner will have to be necessarily put on terms.

5.The learned counsel for the petitioner undertakes to pay a sum of Rs.75,000/- without prejudice to his contention. The Bank attachment will be raised only on remittance of the said amount of Rs.75,000/- to the respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-II)

To
The Assistant Commissioner (CT)(FAC).,
Palayamkottai Assessment Circle,
Commercial Tax Buildings,
Palayamkottai,
Tirunelveli.
+1cc to Mr.S.Karunakar, Advocate, SR.No. 101677
+1cc to M/s.Special Government Pleader,SR.No.101830

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and
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