IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.22351 of 2019
and W.M.P.No.21671 of 2019

M/s.Vignesh Furniture
Represented by its Proprietor
S.Raju
29/16, Royapettah High Road
Chennai - 14 .. Petitioner

Vs.

The State Tax Officer
Royapettah Assessment Circle
Greenways Road
Chennai - 28 .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the of the proceedings of the respondent in TNGST 0781053/2006-07 dated 29.05.2019, quash the same and direct the respondent to furnish the details of stock taken at the time of inspection.

For Petitioner : Mr.R.Kumar
For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.R.Kumar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate, on behalf of sole respondent, are before this Court.

2.An order made by the respondent being 'order dated 29.05.2019 bearing reference TNGST/0781053/2006-07' (hereinafter 'impugned order' for brevity) has been called in question in the instant writ petition.

3. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

4.To be noted, pursuant to earlier hearing on 30.07.2019, Revenue counsel has kept the records of the Department ready in the hearing today.

5. Be that as it may, there is no disputation or disagreement that the impugned order has been made under Section 16 of 'Tamil Nadu General Sales Tax Act, 1959' (' TNGST Act' for brevity).

6.There is no disputation that Section 16 of TNGST Act is in pari materia to Section 21 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity. Impugned order pertains to revised assessment for the Assessment year 2006-07, which shall hereinafter be referred to as 'said AY' for the sake of convenience and clarity.

7. With regard to said AY, revised Assessment order came to be passed on 07.06.2011 and the same was called in question by writ petitioner in this Court by way of earlier writ petitions being W.P.Nos.17580 to 17583 of 2011 and the said writ petitions came to be disposed of by a common order by this Court on 07.10.2014. Operative portion of the common order is contained in Paragraph 7 and the same reads as follows:

> '7.Since it is stated that the records, which were relied upon for arriving at estimation, were not furnished, this Court is of the view that the matter should be remitted back to the Assessing Officer to be heard and decided independently on merits and in accordance with law, without being influenced by the findings recorded by the Enforcement Wing in the D-3 proposal. Therefore, the matter is remitted back to the second respondent for fresh consideration. The second respondent shall issue notice to the petitioner, afford an opportunity of personal hearing to them, hear them and decide the matter on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. '

8. Pursuant to the aforesaid order of this Court, respondent embarked upon the exercise of making a revised assessment. With regard to the revised assessment, there are two aspects which constitute the revised assessment. One aspect pertains to what can be described as 'suppression' and the other aspect pertains to what can be described as 'stock reconciliation'.

9. Post aforesaid order of this Court, writ petitioner sent a communication dated 11.03.2016 to the Department followed by another communication dated 03.04.2019. In these communications, writ petitioner has specifically sought for details of stock taken at the time of inspection.

10. The respondent, had earlier sent a communication dated 27.01.2016 with certain enclosures and to be noted, this communication is also post aforesaid earlier order of this Court. Earlier order of this Court is cited as No.2 in the said communication. Said communication mentions about certain enclosures, but as already mentioned supra, records of the Department are before this Court today and on verification, it comes to light that the stock reconciliation statement and more importantly, stock statement taken at the time of inspection does not form part of the enclosures.

11. As already alluded to supra, the impugned order turns on two aspects, namely, a) suppression and b) stock reconciliation.

With regard to suppression, the stock register or stock reconciliation statement is of no relevance and with regard to suppression aspect, liability of the writ petitioner has been fixed at Rs.67,99,404/- (Rupees Sixty Seven Lakhs Ninety Nine Thousand Four Hundred and Four only) in the impugned order. With regard to stock reconciliation liability, it has been fixed at Rs.55,53,889/- (Rupees Fifty Five Lakhs Fifty Three Thousand Eight Hundred and Eighty Nine only) in the impugned order.

12. Learned counsel for writ petitioner, on instructions, very fairly submits that with regard to suppression aspect i.e., Rs.67,99,404/- (Rupees Sixty Seven Lakhs Ninety Nine Thousand Four Hundred and Four only), writ petitioner would avail statutory remedy of appeal by approaching the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act. With regard to stock reconciliation aspect of little over Rs.55.53 lakhs, mater is remitted back to the respondent with a direction to furnish to the writ petitioner the stock statement made at the time of inspection as well as stock reconciliation statement and redo that part of the assessment alone.

13. As far as statutory appeal under Section 51 of TNVAT Act with regard to suppression aspect where the liability is little over Rs.67.99 lakhs, though obvious it is made cleat that when the writ petitioner avails alternate remedy, conditions of pre-deposit and time frame adumbrated under Section 51 of TNVAT will govern the writ petitioner.

14. It is open to the writ petitioner to seek condonation of delay and also exclusion of time spent in the instant writ petition by placing reliance on Section 14 of Limitation Act. If the writ petitioner chooses to do so, the appellate authority i.e., jurisdictional Appellate Deputy Commissioner shall decide the same on their own merits and in accordance with law.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The State Tax Officer,
Royapettah Assessment Circle, Greenways Road, Chennai - 28

2.The Appellate Deputy Commissioner (ST), Chennai East.

+1 cc to M/s.R.Kumar,Advocate Sr.No.66197
+1 cc to The Special Government Pleader (Taxes), SR.No.66680

AKM/ 28.08.19/ 3P-5C/