BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY
W.A.(MD)No.644 of 2019
and
WMP(MD)No.5380 of 2019

NVK MOHAMED SULTHAN ROWTHER & SONS
Represented by its Partner,
Mr.Raja Mohamed
... Appellant/Petitioner

Vs.

Commerical Tax Officer,
Dindigul - II,
Assessment Circle,
Government Building,
Sub-Collector Office Road,
Dindigul - 624 001. ...Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 24.04.2019 made in W.P.(MD) No.23222 of 2016.

Prayer in WP(MD). 23222/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the impugned notice of the respondent, issued in TIN: No. 33445220050/2013-14 D.No. 14 (Dec.2015) dated 07.10.2016 and quash the same relating to proviso of section 19 (2) of the TNVAT Act 2006 or issue any other Writ.

For Appellant : Mr.Y.Prakash

J U D G M E N T
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[Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

This writ appeal is directed against the order of the writ Court made in W.P.(MD)No.23222 of 2016, dated 24.04.2019.

2.The appellant is the writ petitioner. They approached the writ Court and challenged the notice of proposal, dated 07.10.2016, issued by the respondent. In the said notice, the respondent claimed that the petitioner had effected certain sales during the year 2013-14 and therefore, the respondent has proposed to reverse the credit as stated in the impugned notice. By contending so, the respondent called upon the petitioner to file their objections. The said notice is put to challenge by the petitioner before the writ Court by contending that the petitioner is a manufacturer and therefore, the reversal of credit is not warranted. The Writ Court, after finding that it is only a notice of proposal and that the petitioner has to approach the authority and give their reply, refused to entertain the writ petition. Challenging the said order, the present writ appeal is filed before this Court.

3.We have given our careful consideration to the submissions made by the learned counsel for the appellant and the materials placed in the typed set of papers.

4.There is no dispute to the fact that the notice impugned in the writ petition is issued by the second respondent, who is competent to do so. It is only a notice of proposal. The appellant/petitioner is at liberty to give objection to the said notice by raising all the contentions. Only thereafter, the factual aspects of the matter can be looked into by the assessing authority to pass the final order of assessment. Even before filing such objection before the respondent, the appellant/petitioner seeks to challenge the very notice of proposal, which in our considered view is not maintainable, as rightly held by the Writ Court.

5.Accordingly, we find that the present writ Appeal deserves no merit and hence, the same is dismissed. The appellant/petitioner is granted two weeks time to file reply to the notice of proposal by raising all the contentions. On receipt of such reply/objection, the assessing authority/respondent shall pass final orders on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the assessing authority within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

Commerical Tax Officer,
Dindigul - II,
Assessment Circle,
Government Building,
Sub-Collector Office Road,
Dindigul - 624 001.

+1 CC to M/s.Y.PRAKASH, Advocate (SR-73805[F] dated 05/07/2019)

RJ2

W.A.(MD)No.644 of 2019
04.07.2019

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