BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :**04.11.2019**
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.1112 of 2019

Tvl. Srinivasa Enterprises,
Rep. by its Managing Partner
S.Krishnamoorthy ... Appellant/Petitioner

Vs.

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirapalli. ... Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 30.01.2019 passed in W.P(MD)No.19470 of 2016 and W.M.P(MD)Nos.14034 and 14035 of 2016.

Prayer in WP(MD). 19470/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN: 33773442780/2013-14 dated 8.9.2016 and quash the same as being without jurisdiction and authority of law and issue such further writ, order or direction as this Honble Court.

For Appellant : Mr.R.Seeniappan
For Respondent : Mr.S.Angappan,
Government Advocate

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Seeniappan, learned counsel appearing on behalf of the appellant and Mr.S.Angappan, learned Government Advocate, who accepts notice on behalf of the respondent.

2. The appellant is the writ petitioner, who challenged an order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (the Act) for the assessment year 2013-2014.

3. The learned Single Judge by the impugned order has directed the appellant/petitioner to avail the appeal remedy.

4. The learned counsel for the appellant would strenuously contend that the impugned assessment order is vitiated with serious errors with regard to date and sale of the goods, which is manifest in the impugned assessment order. By way of illustration, it is pointed out that in page No.12 of the order of assessment, in respect of serial No.3, which pertains to sales turnover involved in the difference, between the total turnover as per Trading Account and Letter of objection - Vide Defect No.13, tax has been levied at Rs.238314/-. For the very same turnover, once again in Serial No.5, tax has been levied at Rs.238314. It is submitted that the above error is only an illustration and that there are several other errors, which have been committed during the assessment time and the time sought for the assessee to produce the materials, was not granted and therefore, liberty may be granted to approach the Assessing Officer and place all the materials and the matter may be remitted for *de novo* consideration.

5. On a perusal of the assessment order as well as the order passed by the learned Single Judge, we find that there are conflicted factual issues involved in the matter. Apart from that, this Court also pointed out that there is no specific averment that there was subsequent sale took place during the transit.

6. In the light of the same, we are of the view that the learned Single Judge was perfectly right in directing the appellant/petitioner to avail the statutory appeal remedy, which is not only effective but also efficacious.

7. The appellate authority can re-examine the facts and if there are errors, the same can also be rectified and if he is of the view that the matter is to be re-examined by the Assessing Officer with regard to any particular point, he can also remit the matter to the Assessing Officer. However, such exercise should not be normally done in a writ petition. Therefore, we are of the view that the order passed by the learned Single Judge does not call for interference.

8. It is submitted by the learned counsel for the appellant that the appellant has already remitted 10% of the disputed tax and the learned Single Judge has directed the appellant to remit a further amount of 15% of the disputed tax and this will be an onerous condition.

9. In the light of the above, the writ appeal is dismissed and the direction issued in paragraph No.9 of the impugned order directing the appellant to remit 15% of the disputed tax is modified to that of 10%. Thus, by taking into consideration the fact that the amount of 10% of the disputed tax was already remitted, the

appellant shall remit the balance of 10% disputed tax and if the same is done, the appellate authority shall entertain the appeal without reference to limitation and proceed with the appeal, on merits and in accordance with law. The appellant shall comply with all the conditions and present the appeal within a period of thirty days from the date of receipt of a copy of this judgment. No Costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

pm

To

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirapalli. .

Copy to:

The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai

(to return the original order of assessment filed in the writ petition)

+1 CC to Mr.R.SENNIAPPAN, Advocate (SR-95806[F] dated 04/11/2019)
+1 CC to SPL GP (SR-96062[F] dated 05/11/2019)

JUDGMENT MADE IN
W.A.(MD)No.1112 of 2019
04.11.2019

_MK (22.11.2019) 3P 5C