IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 47817 of 2006
and
M.P. No. 1 of 2006
and
M.P. No. 2 of 2008

Drills Indian,
Rep. by its Proprietor, M.C.Vadivelu,
Mylankattur,
Sathinaickenapalayam - 637 205,
Tiruchengode Taluk,
Namakkal District. ...Petitioner

-vs-

1. The Commercial Tax Officer,
   Tiruchengode (Rural),
   Tiruchengode.

2. The Principal Commissioner & Commissioner of Commercial Taxes,
   Chepauk,
   Chennai - 600 005. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent herein in Asst. No. TNGST. 3202866/2003-04 dated 04.10.2006, quashing the same, while directing the First Respondent to reopen the assessment in TNGST.3202866/2003-04 dated 23.08.2006 and accept the revised return filed by the Petitioners on 28.09.2006 as prayed for by the Petitioners in their application dated 28.09.2006.

For Petitioner : Mr. K.A.Parthasarathi
for Mr.N.Inbarajan

For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. K.A.Parthasarathi, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2.The Writ Petition challenges the Order in Asst. No. TNGST.3202866/ 2003-04 dated 04.10.2006 passed by the First Respondent in the application dated 28.09.2006 made by the Petitioner under Section 14 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act' for short).

3.The grievance sought to be ventilated by the Petitioner in this Writ Petitioner is that Section 14 of the TNGST Act enables the dealer to apply for fresh assessment within a period of 30 days from the date of service of the assessment order by satisfying the assessing authority that the failure to submit return in time or of having submitted incorrect or incomplete return was due to reasons beyond his control and to seek cancellation of the assessment made and make a fresh assessment. Though the Petitioner made that application within time and had also specifically explained the reason for his inability to file return with particulars as due to the fact that certain forms had been obtained by him only after the assessment had been made, the First Respondent by the impugned order has brushed aside the same and rejected that application by cryptically stating that the books of account had not been produced before passing the order.

4.A plain reading of the provisions of Section 14 of the TNGST Act would reveal that when the dealer explains the reason for not having submitted the return in time, or of having submitted incorrect or incomplete return due to reasons beyond his control, it is incumbent upon the assessing authority to consider the application made under Section 14 of the TNGST on subjective satisfaction as to whether that the said requirement has been fulfilled. As it is apparent from the face of the record that the aforesaid exercise had not been carried out while passing the impugned order, it cannot be sustained and shall stand set aside. The application made by the Petitioner under Section 14 of the TNGST Act is restored to the file of the First Respondent for fresh consideration. The First Respondent, after affording opportunity of personal hearing, shall deal with each of the contentions raised following the prescribed procedure in consonance with the principles of natural justice, and shall pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

5.The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. The Commercial Tax Officer,
   Tiruchengode (Rural),
   Tiruchengode.

2. The Principal Commissioner & Commissioner of Commercial Taxes,
   Chepauk,
   Chennai - 600 005.

+1cc to Mr.N.Inbarajan, Advocate, SR.No.36571
+1cc to Special Government Pleader(Taxes), SR.No.36624

W.P. No. 47817 of 2006

NRJK(CO)
KKV/03/12/2020