IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2020

PRONOUNCED ON : 16.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.13729OF 2016
AND
WPMP.NO.12031 OF 2016

M/s.Bala Electronics,
Rep.by its Proprietor- R.Iyyanar,
No.62/C, Krishna Bazaar,
Villupuram,
Villupuram District. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Villupuram-II,
Villupuram,
Villupuram District. ... Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the respondent in his impugned proceedings made in TIN No.33314701694/12-13 dated 13.01.2016 quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondents : Ms.Dhanamadri, GA

O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Ms.Dhanamadri, learned Government Advocate appearing on behalf of the respondent.

2. The petitioner herein is a dealer in electrical goods and an assessee on the file of the respondent herein. Pursuant to the filing of the monthly returns for the Assessment Year 2012-

13, the respondent had issued a notice dated 03.02.2014 to the petitioner stating that they had violated the conditions specified under Section 3(4) of the Tamil Nadu Value Added Tax Act (hereinafter referred to as "Act") by collecting tax on sales turnover of Rs.8,35,520/- for which he is ineligible. In consideration of the petitioner's reply dated 04.03.2014, a revised notice dated 23.10.2015, came to be issued proposing to confirm the earlier levy and assess the petitioner on Best of Judgment under Section 3(2) of the Act for the Assessment Year 2012-13 for total taxable turn over of Rs.46,02,434/- at 14.5% per annum. No objections were raised to the revised notice and accordingly, the respondent had passed the impugned proceedings dated 13.01.2016 determining the total taxable turn over at Rs.46,02,434/- and the tax due at the rate of 14.5% was determined at Rs.6,67,353/-. The said proceedings is now challenged in the present Writ Petition.

3. The learned counsel for the petitioner would contend that the respondents were factually wrong and had failed to note that the sale Invoice Nos.2071 and 2072 dated 27.12.2012 did not show the tax amount separately and that even assuming that the petitioner collected tax in terms of Section 3(4) of the Act, the respondents cannot assess the sale turn over at 14.5% p.a., but can only levy penalty under Section 40(2) of the Act.

4. The learned Government Advocate, by reiterating the averments made in the counter submitted that the petitioner had wrongly quoted the sale Invoice Nos.2071 & 2072 instead of Invoice Nos.2671 & 2672 dated 27.12.2012. According to her, perusal of these bills discloses disparity and that the petitioner is mentioning two different sets of sale bills and therefore, not entitled for availing the concessional rate of tax as per Section 3(4) of the Act. Hence, the assessment order passed, does not require interference.

5. Without going into the merits of the submissions made by the learned counsel for the petitioner, it is seen that as against the impugned proceedings of the respondent herein, an appeal remedy lies before the Appellate Commissioner (CT), which the petitioner herein has not availed of. The grounds raised by the petitioner, are factual in nature and do not fall under any of the exceptions for them to over look the appellate remedy and invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is settled proposition of law that barring a few exceptions, this Court will not entertainn a Writ Petition on grounds touching upon the errors on the facts. The petitioner has not raised any exceptional grounds for this Court to invoke its extraordinary jurisdiction and thereby interfere with the impugned proceedings. Nevertheless, since this Court is of the view that

the grounds requires consideration, it would be appropriate to grant liberty to the petitioner to challenge the impugned proceedings before the Appellate Authority.

6. In the light of the above observations, the petitioner is granted liberty to file an appeal as against the impugned proceedings dated 13.01.2016, within 30 days from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any of its views on the merits of the grounds raised by the petitioner and that the petitioner is at liberty to raise all these grounds before the Appellate Authority. On receipt of such an appeal, the Appellate Authority shall endeavor to consider the same on its own merits and pass appropriate orders, after giving due opportunity of hearing to the petitioner as well as the respondent and conclude the proceedings, atleast within a period of 60 days from the date of receipt of the appeal. The Writ Petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

DP

To

The Deputy Commercial Tax Officer,
Villupuram-II, Villupuram,
Villupuram District.

+1cc to M/s.Hemalatha, Advocate, S.R.No.24844
+1cc to the Special Government Pleader, S.R.No.24837

W.P.No.13729 of 2016
and
W.M.P.No.12031 of 2016

MG(CO)
CS/29/09/2020