IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.18038 of 2015
and
M.P.No.1 of 2015

Tvl.Sri Krishna Agencies
Represented by its Proprietor
R.Subash Chander
Maligaikottam
Pennadam
Cuddalore District ... Petitioner

Vs.

The Deputy Commercial Tax Officer (Addl) (FAC)
Virudhachalam Assessment Circle
Ground and first floor
No.135, Junction Road
Virudhachalam ... Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari to call for the records in respect of the impugned order TIN.33614425963 / 2013-14 dated 29.05.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006 for the year 2013-14 and quash the same.

For Petitioner : Mr.S.P.Asokan

For Respondent : Mr.A.N.R.Prathap
Government Advocate (Taxes)

ORDER

Heard both sides and perused the records.

2.The challenge made in this writ petition is to the order dated 29.05.2015 passed by the respondent with respect to the Assessment Year 2013-14. In the said assessment order, it is stated that the petitioner has effected purchase of cement for Rs.58,94,847/- from registered dealers during the assessment year in question, but they have not reported the same and paid tax due on its corresponding sales value and hence, they are liable to pay tax on a total and taxable turnover of Rs.1,32,28,036/- at Rs.19,18,065/- along with penalty at Rs.14,38,549/-.

3.Upon notice, the respondent filed a detailed counter affidavit, pointing out the inadvertent mistake committed by the then Assessing Authority, while passing the assessment order, which is impugned herein. For better appreciation, the relevant portion of the same is extracted hereunder:

> "4.It is respectfully submitted that the Additional Deputy Commercial Tax Officer, having Full additional charge, have gathered the purchase details from website and sales Turnover arrived by adding freight & Gross Profit and issued notice proposing the Turnover at Rs.1,32,28,036/- in his notice dated 29.04.2015 without the knowledge of the return in Form.I-1 filed by the dealers before the issue of Notice. After passing orders on 29.05.2015 on the notice issued, the petitioner has filed a letter dated NIL, received by the Respondent's Office on 02.06.2015 stating that he had filed Form.I-1 return already on 18.05.2014.
>
> 5.With regard to the averments made in Para 3 and 4 of the affidavit, it is submitted that the verification of the assessment file for the assessment year 2013-2014 revealed that the petitioner has filed the Form-I-1 return through online on 18.05.2014 disclosing a purchase Turnover of Cement at Rs.57,16,933/- and sales Turnover of Cement at Rs.9,37,500/- which is below the taxable limit of Rs.10 lakhs under the Act."

4.In view of the aforesaid averments made in the counter affidavit filed by the respondent, this Court is inclined to set aside the order impugned herein. Accordingly, the order dated 29.05.2015 passed by the respondent relating to the assessment year 2013-14 is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to consider the returns and other materials submitted by the petitioner and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

5.This writ petition stands allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kas

To

The Deputy Commercial Tax Officer (Addl) (FAC)
Virudhachalam Assessment Circle
Ground and first floor
No.135, Junction Road
Virudhachalam.

+1cc to Special Government Pleader, Sr.No.22816

W.P.No.18038 of 2015
and
M.P.No.1 of 2015

KS(CO)
GS(17/07/2020)