IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 16552 of 2016

and

W.M.P. Nos. 14292 & 14293 of 2016

M/s.Sri Ganesh Medicals,
Represented by its Proprietor - P.V.Kaliaperumal,
No.709-M, Junction Road,
Vriddachalam,
Cuddalore District - 606 001. ... Petitioner

Vs

The Commercial Tax Officer,
Vriddachalam,
Cuddalore District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in his impugned proceedings made in TIN:33804423967/2013-2014 dated 15.10.2015 quash the same.

For Petitioner : Mr. S. Rajasekar
For Respondent : Mr. M. Hariharan
Additional Government Pleader

ORDER

The Petitioner has filed this writ petition, seeking for issuance of a Writ of Certiorari, to call for the records of the Respondent in the impugned proceedings made in TIN:33804423967/2013-2014 dated 15.10.2015 quash the same.

2. Heard the learned counsel for the Petitioner and the learned Additional Government Pleader for the Respondent.

3. The short point that arises for consideration is that whether the Petitioner would be liable to pay tax as per Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 (in short the TNVAT Act) for failure to inform the Department and after exceeding the turn over of Rs.50 lakhs within seven days from the date presenting such turn over.

4. By the impugned order, the Respondent has held that since the Petitioner had failed to report/to inform the Respondent regarding the exceeding of the turn over of Rs.50 lakhs, the

Petitioner would be liable to pay tax under Section 3(2) of the TNVAT Act, 2006.

5. The learned counsel for the Petitioner submits that the issue is no longer res-integra and it is now covered by the decision of the Madurai Bench of this Court vide order dated 20.12.2018 in W.P(MD). No. 3744 of 2015. The operative portion of the order reads as follows:

> "15. Applying the aforesaid principles, this Court notes that the consequences of non adherence have not been stipulated in the statutory scheme itself. That apart, the rule in question is rather procedural in character. The omission on the part of the assessee to inform the assessing authority within the stipulated time can always be made good later. Therefore, this Court has to necessarily hold that the requirement that the dealer who is under the composition scheme should infrom the assessing authority within seven days from the date on which the turnover has crossed the limit is only directory.
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> 16. In this view of the matter, the order impugned in this writ petition is set aside. This writ petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law after affording an opportunity of personal hearing to the petitioner. The learned counsel for the petitioner states that the petitioner will file his objections to the notice issued by the respondent within a period of four weeks from the date of receipt of a copy of this order."

The learned counsel for the Respondent fairly submits that the issue is now squarely covered by the said decision.

6. In view of the above, the Writ Petition stands allowed by way of remand. The Respondent is directed to calculate the balance amount of tax on Rs.4,752/- from the Petitioner. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

arb

To

The Commercial Tax Officer,
Vriddachalam,
Cuddalore District.

+1cc to Ms.R.Hemalatha, Advocate, SR.No.1591.
+1cc to Government Pleader, SR.No.2335.

W.P. No. 16552 of 2016
and
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MR(CO)
CSR: 14.02.2020