IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29419 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.The New Auto Electric Service,
Rep.by its Proprietrix- P.Kalliammal,
No.351, Trichy Road,
Namakkal,
Namakkal District. ...Petitioner

Vs

1.The State of Tamil Nadu,
Rep.by the Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai -9.

2.The Commercial Tax Officer,
Namakkal Town,
Namakkal,
Namakkal District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the second respondent in its impugned proceedings in TIN 33753120072/2007-08 dated 26.08.2015 quash the same.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.A.N.R.Jaya Prathap
Special Government Pleader

O R D E R

Today, the matter is called through video conferencing. By consent of both the parties, the writ petition is taken up for final disposal.

2. The show cause notice dated 26.08.2015 proposing to disallow the Input Tax Credit for adjustment towards output tax under Section 3(2) of the Tamil Nadu Value Added Tax Act and for the revision of the assessment has been put under challenge in the present Writ Petition.

3. The petitioner's submission is that the amendment to Section 3(4) of the Tamil Nadu Value Added Tax Act would have to be applied retrospectively and hence, the proposal itself cannot be substantiated.

4. A learned Single Judge of this Court in W.P.Nos.9996 of 2012, etc., batch of cases in Tvl. Makkal Stores, rep. by its partner A.J. Issath & 3 others vs. State of Tamil Nadu, rep., by The Secretary, Commercial Taxes and Registration Department, Fort St. George, Chennai-9 and others, had relied upon another decision in W.P(MD).No.3744 of 2015 in the case of Tvl.Shanmugamari Timbers vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai-20, and had held that the amendment to Section 3(4) of the TNVAT Act would have to be applied retrospectively.

5. Since the impugned proposal is only a show cause notice, it would be appropriate for the petitioner to putforth his objections by way of a reply, wherein, it would always be open to the petitioner to rely on the decision in Makkal Stores and others (Supra) and this Court may not be justified in interfering with the show cause notice by invoking its power under Article 226 of the Constitution of India.

6. In the light of the above observations, the petitioner is granted liberty to give his objections to the impugned show cause notice dated 26.08.2015, within a period of 30 days from the date of receipt of copy of this order. On receipt of such objections, the second respondent herein shall consider the same on its own merits and in accordance with law and take further course of proceedings, after giving due opportunity of personal hearing to the petitioner, if necessary through video conferencing, within a period of 12 weeks from the date of receipt of the objections.

7. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai -9.

2.The Commercial Tax Officer,
Namakkal Town,
Namakkal,
Namakkal District.

W.P.No.29419 of 2015
and
M.P.Nos.1 & 2 of 2015

SSV(CO)
RMP(15/09/2020)