IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6427 of 2012
and
W.M.P.Nos.1 & 2 of 2012

Tvl.G.T.Auto Agencies,
Rep by its Partner - V.Raja,
Junction Main Road,
Subramani Nagar 2nd Gate,
Suramangalam, Salem - 5. ... Petitioner

Vs.

The Commercial Tax Officer,
Suramangalam Circle,
Salem, Salem District. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, call for the impugned proceedings of the Respondent in TNGST No.2801506/2006-07 dated 30.01.2012 and to quash the same as illegal and contrary to Section 87-A of the TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.A.N.R.Jayaprathap
Government Advocate

O R D E R

The petitioner has challenged the impugned order dated 30.01.2012 demanding an amount of Rs.1,15,499/- and surcharge of Rs.6,300/-. The impugned order also imposes penalty of Rs.1,82,699/- under Section 12(3)(b) of the TNGST Act, 1959.

2.The dispute in the present Writ Petition pertains to the period between April 2006 to December 2006. It appears that the respondent had issued a notice asking the petitioner to filed the returns. The petitioner had also filed their returns disclosing the taxable turn over of Rs.10,50,046/- vide monthly returns filed in Form A1. However, the respondent concluded that taxable turn over report is not conclusive for self assessment under Section (12)(1)(c) of the TNGST Act, 1959.

3. In the impugned order, the respondent had denied the benefit of tax at 1% concessional rate of tax under Section 3-H of the TNGST Act, on the ground that the petitioner had not filed returns in Form-A9 and therefore the turnover will be asssed at normal rate of tax.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. It is noticed that during the period in dispute Section 12(C) had came into effect. In terms of Section 12 of the TNGST Act even incorporated in the Section 87-A & Rule 8(8) of the TNVAT Act, 2006 which reads as follows:-

> Section 87-A:Assessment of sales in certain cases- Notwithstanding anything contained in this Act, the assessment of a dealer under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) or under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970), in respect of assessment for the period from the 1st day of April 2006 to the 31st day of December 2006, shall be on the basis of the return filed by him, within such time and in such manner as may be prescribed and such returns shall be accepted in accordance with the Rules as may be prescribed.
> [This Section was added from 8th June 2008 by Section 4 of the Amendment Act No.49 of 2008.]
>
> Rule 8(8)(a): The Assessment relating to the period from 1st day of April 2006 to 31st December 2006 shall be a deemed assessment and accordingly, the Assessing Officer shall accept the returns filed under the repealer Act within the period already prescribed and assess the dealers without calling for the accounts from the dealers.
> (b): Where the dealer did not submit the prescribed declaration Forms or certificates as required under the provisions

of the Acts repealed under Section 88 of the said Tamil Nadu Act 32 of 2006 in support of the claim of the concessional rate of tax or exemption, as the case may be, the Assessing Authority shall assess them after giving the dealer a reasonable opportunity to file the prescribed declaration Forms or certificates.

6. Since the impugned order has been passed without considering the above provision, I am inclined to set aside the impugned order and remit the case back to the respondent to pass a fresh order. The impugned order which stands quashed by this order shall be treated as a show cause notice. The petitioner may file their objections if any, within a period of 30 days from the date of receipt of a copy of this order. The respondent is directed to pass appropriate orders within a period of three months thereafter.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Suramangalam Circle,
Salem, Salem District

+1cc to M/s. R. Hemalatha, Advocate, S.R.No.15922
+1cc to the Special Government Pleader(Taxes), S.R.No.16407

W.P.No.6427 of 2012
and W.M.P.Nos.1 & 2 of 2012

SJ(CO)
KKV/21/05/2020