IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 03.09.2020

PRONOUNCED ON : 10.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.3737 of 2016
and WMP.Nos.3118 & 3119 of 2016

M/s.Arun Pharmacy,
rep. by its Partner Arun Sathish,
Plot No.1,2,3, Ashok Manor,
Medavakkam Main Road,
Kovilambakkam,
Chennai-600 117. ...Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Medavakkam Assessment Circle,
26-D, BHEL Nagar, IV Main Road,
8th Cross Street, Medavakkam,
Chennai-600 100.

2.The Manager,
City Union Bank,
Nanmangalam Branch,
Chennai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in Order in TIN 33410987617/2011-12 dated 05.12.2014 passed by the first respondent and the notice TIN 33410987617/2011-12 dated 20.01.2015 issued by the first respondent and to quash the same as arbitrary and illegal and direct the first respondent to consider the petition dated 28.01.2015 for reopen or revise the assessment for the year 2011-12.

For Petitioner : Mr.Joseph Prabhakar,
for Mr.K.G.Raghunath
For Respondent-1 :Mr.R.Swarnavel, GA (T)
For Respondent-2 :Mr.R.Sivaraman

ORDER

With the consent of both the parties, the present Writ Petition is heard through Video Conferencing on 03.09.2020.

2. The petitioner herein was originally assessed, on self assessment basis under Section 22(2) of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as 'TNVAT Act'), for the Assessment Year 2011-2012 for a turnover below Rs.50 lakhs. On inspection, it is alleged that there was sales suppression and by taking into account the alleged suppressed sale, the total turnover was arrived at a sum, which is over and above Rs.50 lakhs. In this background, the first respondent had issued the impugned order, revising the assessment for the year 2011-12 on the total turnover of Rs.54,77,320/-. Consequently, a demand notice dated 20.01.2015, for attachment of the bank account under Section 45 of the TNVAT Act was also issued and the petitioner's bank account was accordingly attached. The order of revisional assessment, as well as, the demand notice, are put under challenge in the present Writ Petition. In the meanwhile, the petitioner also filed an application under Section 84 of the TNVAT Act, seeking for rectification, which is said to be pending.

3. While the petitioner contends that under Section 3(4) of the TNVAT Act, the respondent is entitled to levy tax at the rate of 12.5% on the amount that exceeds Rs.50 lakhs, the respondent claim that the dealer is not entitled for the compounding system under Section 3(4) of the TNVAT Act, since the turnover had exceeded Rs.50 lakhs and therefore, he would come out of the purview of the benefit under Section 3(4) of the TNVAT Act and is liable to pay the regular tax for the entire turnover under Section 3(2) of the Act.

4. Section 3(4)(b) of the Tamil Nadu Value Added Tax, (Fourth Amendment) Act 2011, enables the dealer to pay tax for each year on his turnover relating to taxable goods upto Rs.50 lakhs at 1% and for the sales turnover over and above Rs.50 lakhs, he is liable to pay tax under Section 3(2). The aforesaid amendment came into effect from 01.04.2012 and a bare reading of the provision explicitly permits the dealer to pay tax at the compounded rate of 1% under Section 3(4) for the sales turnover of Rs.50 lakhs and for the turnover that exceeds Rs.50 lakhs, they are liable to pay tax under Section 3 (2) of the TNVAT Act. In view of the amendment, the respondent may not be justified in bringing the dealer out of the purview of Section 3(4) of the Act, as and when it is found that the sales turnover of the dealer exceeds Rs.50 lakhs and thereby, subject them to the rate of tax under Section 3(2) for the “entire sales turnover”.

5. The aforesaid proposition has also been reiterated by this Court in M/s.Rajendran Timber and Plywood, Selaiyur, Chennai-600 073 Vs. The Assisstant Commissioner (CT), Selaiyur Assessment Circle, Chennai-600 073 in a decision dated 29.06.2016 taken in W.P.No.15889 of 2015. As such, the impugned proceedings which proceeds to levy tax on the entire sales turnover is not in conformity to Section 3(4) of the Act and is liable to be set aside.

6. For all the foregoing reasons, the impugned proceedings in TIN 33410987617/2011-12 dated 05.12.2014 and the demand notice dated 20.01.2015 issued by the first respondent, are quashed and the matter is remanded back to the first respondent herein for reconsideration. The Assessing Authority shall take into consideration of the findings in this order and thereafter, reassess the petitioner's sales turnover, after giving due opportunity of personal hearing to the petitioner. The first respondent shall also take into consideration the rectification petition dated 28.01.2015 filed by the petitioner under Section 84 of the TNVAT Act and on consideration of any further objections raised by the petitioner during the assessment proceedings, the Assessing Authority shall endeavor to complete the assessment proceedings, as expeditiously as possible. The order of attachment of the bank account of the petitioner issued pursuant to the notice dated 20.01.2015, shall stand raised.

8. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Deputy Commercial Tax Officer,
Medavakkam Assessment Circle,
26-D, BHEL Nagar, IV Main Road,
8th Cross Street, Medavakkam,
Chennai-600 100.

2.The Manager,
City Union Bank,
Nanmangalam Branch,Chennai.

+1cc to Mr.K.G.Ragunathan , Advocate SR.No. 29728
+1 cc to Spl Government Pleader Sr.No. 29675

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A.SK(16/10/2020)