IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.41829 of 2016
and
W.M.P.No.35798 of 2016

Gothi Impex,
(Represented by its proprietor, Mr.Sanjay Gothi),
No.52, Kalaivanar Nagar, 3rd Cross,
Pattanur - 605 006. ...Petitioner

Vs.

1.The Commercial Tax Officer (Main),
136, 137, Nehru Street,
Tindivanam.

2.Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in TIN: 33974722682/2013-14 dated 04.10.2016 and quash the same.

For Petitioner : Mr.Santhana Gopalan. D for
M/s.Lakshmikumaran
& Sridharan Attorneys

For Respondent : Mr.A.N.R.Jayaprathap
Government Advocate (T).

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 04.10.2016 passed by the 1st respondent in TIN: 33974722682/2013-14.

2. The petitioner had imported consignment of ice cream sticks and spoons from China. The petitioner has its Branch office at Chennai and the Registered & Head office at Pondicherry. Out of 23 consignments imported by the petitioner in respect of the 11 consignments, the suppliers invoiced in the petitioner's branch office at Chennai. It was construed by the 1st respondent that the petitioner had effected local sales and therefore, liable to tax under TNVAT Act, 2006.

3. Under these circumstances, a notice dated 02.02.2015 was issued followed with another notice dated 03.03.2016 by 1st respondent, which were replied by the petitioner. It is the contention of the petitioner that the petitioner had furnished the documents in this regard and though the documents were furnished, they were not considered by the 1st respondent and instead several other documents stated to have not been filed by the petitioner in impugned order and therefore, it was passed in violation of principles of natural justice.

4. Since the issue involves in the several disputed question of facts, I am inclined to remit the case back to the 1st respondent to consider the objection of the petitioner subject to the payment of 25% of the disputed tax with the 1st respondent as deposit.

5.Accordingly, the impugned order is set aside and the case is remitted back to the 1st respondent subject to payment of 25% of the disputed tax within a period of thirty days from the date of receipt of a copy of this order. The petitioner may file additional objections / representations within a period of thirty days from the date of receipt of a copy of this order.

6.On such deposit of 25% of the disputed tax, the 1st respondent is requested to pass appropriate orders within a period of thirty days thereafter, after considering the objections/ representations and the evidence which are filed, if any, to substantiate that no local sale attracting the provisions of the TNVAT Act, 2006 was made by the petitioner.

7. Accordingly, the present Writ Petition is disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer (Main),
136, 137, Nehru Street, Tindivanam.

2.Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

+1cc to Special Government Pleader(Taxes),S.R.No.15854

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and W.M.P.No.35798 of 2016

SV(CO)
KKV/07/09/2020