BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.9428 & 10004 of 2020 and

W.M.P.(MD)Nos.8551 & 8937 of 2020

Tvl.J.F.International,
Rep. by its Proprietor,
K.B.Rajkamal Hameed. ... Petitioner in both petitions

Vs.

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The State Tax Officer(Intelligence),
   Inspection Cell-IV,
   Commercial Taxes Complex,
   Dr.Thangaraj Road,
   Madurai - 625 020.

3. The Assistant Commissioner(ST),
   K.K.Nagar Assessment Circle,
   Commercial Taxes Complex,
   Dr. Thangaraj Road,
   Madurai - 625 020. ... Respondents in both petitions

Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in GSTIN-33ATGPR7578D1ZD/2018-19andGSTIN-33ATGPR7578D1ZD/2019-20 dated 27.12.2019 and quash the same.

(in both W.Ps.)
For Petitioner : Mr.Raja. Karthikeyan

For Respondents : Ms.J.Padmavathi Devi,
Special Government Pleader.

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. Though the assessee is one and the same, the assessment orders are different and hence these writ petitions have been independently filed. In both the writ petitions, a common ground of attack has been mounted. The petitioner's counsel points out that the respondent/assessing authority had gone by the bank account entries. The assessing authority compared the sale returns filed by the petitioner with the bank account remittances. The authority had come to the conclusion that since the assessee had not produced documentary evidences to explain all the transactions, the authority chose to treat all the remittances as sales proceeds.

3. The learned counsel appearing for the petitioner drew my attention to the decision reported in AIR 1977 SC 298(Girdhari Lal Nannelal V. The Sales Tax Commissioner, M.P.). In the said decision, the Hon'ble Supreme Court has held that the fact that the assessee could not adduce satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions.

4. The learned Special Government Pleader controverted this contention by pointing out that the petitioner had been doing business by selling granites only to P.S.G. educational institutions. The remittances in question had been primarily made by those institutions. Therefore, on this ground, the learned Special Government Pleader sought to distinguish the aforesaid ruling.

5. The aforesaid ruling of the Hon'ble Supreme Court could have been distinguished only if there is any evidence to the contrary. If by examining the authorised persons of P.S.G. group, the authorities are able to deduce that the amounts remitted by them were towards sale transactions, obviously, the said case law will have no application. Since such a course of action was not resorted to, I am constrained to interfere. On this ground, I quash the impugned proceedings.

6. Before hearing the matter, I wanted to put the petitioner on terms. The learned counsel appearing for the petitioner states that the petitioner would remit a sum of Rs.1,00,000/-(Rupees One Lakh only) to the respondents within a period of two weeks from the date of receipt of a copy of this order. The petitioner's counsel states that the petitioner had suffered a major accident recently and that is why, this Court is showing indulgence in the matter of imposing terms.

7. Leaving open all the contentions on either side, these writ petitions stand allowed. The matter is remitted to the file of the second respondent who shall pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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O/o. The Principal and Special Commissioner of Commercial Taxes,
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+2 CC to M/s.B. ROOBAN, Advocate (SR-16595 & 16596 [F] dated 11/09/2020)

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09.09.2020

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