IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.12342 of 2016
and W.M.P.No.10679 of 2016

M/s.Srinivasa Trading Company,
Rep., by its Partner, M.S.Mohan Sivakumar,
No.27, Perumal Kovil Street,
Kangayam, Tirupur District-638 701. .. Petitioner

-vs-

1.The Commercial Tax Officer,
Roving Squad-I, Salem.

2.The Assistant Commissioner (CT),
Kangayam Assessment Circle,
Kangayam, Erode District-638 701.

3.The Deputy Commercial Tax Officer (Cnf),
Roving Squad-I, Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the first respondent in G.D.R.No.175/2014-15 dated 06.04.2015 and the consequential proceedings in Va.Ve.33243083153/2014-15 dated 02.03.2016 issued by the second respondent and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.R.Swarnavel,
Government Advocate (Taxes)

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ORDER

The impugned order dated 06.04.2015, passed by the first respondent, imposing compounding fee under the Tamil Nadu Value Added Tax Act, 2006 and the consequential proceedings dated 02.03.2016, in Va.Ve.33243083153/2014-15 issued by the second respondent, are under challenge in the present writ petition.

2.The factual dispute, as raised, deserves a complete adjudication by the original authority as well as by the appellate authority and the High Court in exercise of powers under Article 226 of the Constitution of India, cannot adjudicate those issues, facts and circumstances, as there is a provision for revision/appeal, as the case may be.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the compounding fee is levied by the Commercial Tax Officer and the files are being under adjudication by the Commercial Tax Officer. Thus, the files are to be transferred to the regular Assessing Officer, who is competent to consider all the disputed facts and circumstances and pass appropriate orders on merits and by affording opportunity to the parties.

4.The submission, made in this regard, is an acceptable solution in respect of the grievances set out in the present writ petition. With reference to the facts and circumstances, the regular jurisdictional Assessing Officer would be competent to adjudicate the same and with reference to the documents and evidences made available. Once the Assessing Officer passed an order, thereafter, the assessee is aggrieved, then the assessee may seek for appropriate remedy under the provisions of the statute. In view of the facts and circumstances, this Court is inclined to pass the following orders:-

(i) All the files pertaining to the case of the petitioner in this writ petition are directed to be transferred to the jurisdictional Assessing Officer, who in turn, shall adjudicate the issues by following the procedures contemplated under the Act and Rules and by affording opportunity to the assessee and pass appropriate assessment orders in the manner known to law;

(ii) The said exercise is directed to be done by the Assessing Officer within a period of three months' from the date of receipt of a copy of this order; and

(iii) The petitioner is directed to cooperate with the Assessing Officer for passing of the order as expeditiously as possible and unnecessary adjournments should not be resorted to by either of the parties.

5.With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commercial Tax Officer,
Roving Squad-I, Salem.

2.The Assistant Commissioner (CT),
Kangayam Assessment Circle,
Kangayam, Erode District-638 701.

3.The Deputy Commercial Tax Officer (Cnf),
Roving Squad-I, Salem.

+1cc to Mr.S.Raveekumar, Advocate, S.R.No.24533
+1cc to Special Government Pleader(Taxes), S.R.No.25060

W.P.No.12342 of 2016

PP(CO)
CB(29/06/2021)