IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.2330 & 2332 OF 2021
AND
W.M.P.NOS.2632 & 2634 OF 2021

[Video Conferencing]

Sree Vinayaga Agencies,
Represented by its Proprietor,
M.Mahalingam,
No.3-1/54, Bazaar Street,
Jalagandapuram – 636 501,
Salem District. ... Petitioner in both Writ Petitions

.Vs.

The State Tax Officer,
Edappadi Assessment Circle,
Edappadi. ... Respondent in both Writ Petitions

PRAYER IN W.P.NO.2330 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 1st Respondent in TIN:33293244097/2013-14 dated 29.12.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such further writ, order or direction as this Court may deem fit.

PRAYER IN W.P.NO.2332 OF 2021:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 1st Respondent in TIN:33293244097/2012-13 dated 28.12.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such further writ, order or direction as this Court may deem fit.

For Petitioner : Mr.R.Senniappan
(in both Writ Petitions)

For Respondents : Mr.Amirta Poonkodi Dinakaran
Government Advocate
(in both Writ Petitions)

COMMON ORDER

The petitioner has challenged the impugned assessment order dated 28.12.2020 for the assessment year 2012-13 and the impugned assessment order 29.12.2020 for the assessment year 2013-14. These Writ Petitions have been filed primarily on the ground that the notices preceding the impugned orders are time barred as the assessment years in question are 2012-13 and 2013-14, whereas the notices were issued long after the expiry of limitation under Section 27 of the TNVAT Act, 2006.

2. On merits, the learned counsel for the petitioner submits that the petitioner's turnover admittedly is below Rs.50 lakhs for the respective assessment years and therefore, there is no basis for levying tax on the sales effected by the petitioner at concessional rate of tax under Section 3(4) of TNVAT Act, 2006.

3. The learned counsel for the petitioner submits that the taxable turnover for the assessment year 2012-13 is Rs.46,04,175/- and the taxable turnover for the assessment year 2013-14 is Rs.48,27,387/- and therefore submits that even otherwise the impugned orders are unsustainable on merits.

4. Opposing the same, the learned Government Advocate appearing on behalf of the respondent would submit that the impugned orders are well reasoned and requires no interference. The learned Government Advocate would further submit that the petitioner has got an alternate remedy before the Appellate Commissioner under Section 51 of the TNVAT Act, 2006. It is therefore submitted that the Writ Petitions are liable to be dismissed as the petitioner has got an alternate remedy which is more efficacious in nature.

5. That apart, the learned Government Advocate further submitted that the petitioner has not satisfied the requirement of sub-clause (4)(a) to Section 3 of TNVAT Act, 2006 and therefore, even on merits, there is no case made out for interference.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

7. The argument advanced by the learned counsel for the petitioner that the show cause notices preceding the impugned orders are time barred under Section 27 of the TNVAT Act, 2006 cannot be countenanced in as much as the notices were issued well within the limitation prescribed and that the petitioner has also received and acknowledged the same, as it is evident from the records filed by the respondent. Therefore, this argument of the petitioner that the show cause notices and the consequential orders passed by the respondent are without jurisdiction cannot be countenanced. To that extent, I find no reason to interfere with the impugned orders.

8. The question as to whether on merits the petitioner should be relegated back to workout the remedy before the Appellate Commissioner or whether the issues can be resolved will depend on the nature of the case. On a reading of the impugned orders, it is noticed that there is no proper discussion in the impugned orders for increasing the turnover and determining the tax liability. Section 3-(4)(a) of the TNVAT Act, 2006 reads as follows:

> 3.Levy of taxes on sales of goods:
>
> (1)......
>
> (2).....
>
> (3).....
>
> (4) (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of subsection (1), every dealer, who effects second and subsequent sales of goods purchased [from the registered dealers] within the State, whose total turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under subsection (2), pay a tax, for each year, on his [turnover relating to taxable goods] at such rate not exceeding one percent, as may be notified by the Government. Such option shall be exercised by the dealer,
>
> (i) Who commences business, within thirty days from the date of commencement of the business;
>
> (ii) Whose turnover is below rupees fifty lakhs during the previous year, on or before 30th day of April of the year for which he exercises such options;

(iii) For the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008:

Provided that such dealer shall not collect [any amount by way of tax or purporting to be by way of tax :]

Provided further that such dealer shall not be entitled to input tax credit on the goods purchased by him:

Provided also that the dealer who purchased goods from such dealer shall not be entitled to input tax credit on the goods purchased by him.

9. To be eligible to avail the benefit of payment of tax at concessional rate of tax at 1% or 0.5% as the case may be, the petitioner's turnover during the preceding financial year should have been less than Rs.50 lakhs. This aspect has not been determined by the respondent in the impugned orders. Only if the petitioner is qualified for partial exemption/concession in terms of the above section, the petitioner can be said to be entitled to pay tax at concessional rate of tax. This aspect has not been discussed in the impugned orders.

10. Considering the same, impugned orders are quashed and the cases are remitted back to the respondent to pass speaking orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to file proper reply to the notices issued by the respondent. The petitioner shall also be granted an opportunity of personal hearing.

11. These Writ Petitions are allowed by way of remand with the above observation. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pgp

To

The State Tax Officer,
Edappadi Assessment Circle,
Edappadi.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.68750
+2ccs to the Special Government Pleader (Taxes), S.R.Nos.68431 & 68432

W.P.NOS.2330 & 2332 OF 2021 AND
W.M.P.NOS.2632 & 2634 OF 2021

PVS(CO)
PBS/19/01/2022