IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2777 of 2019
&
W.M.P.Nos.3048 & 3049 of 2019

(Through Video Conferencing)

M/s Popular Hardware Mart,
Rep.by its Partner,
No.6, Chetty Street,
Kattumanar Koil,
Cuddalore District-608 301.

... Petitioner

Vs

The Commercial Tax Officer,
Chidambaram II Assessment Circle,
No.99-100, South Street,
Chidambaram- 608 081.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN:33134460080/2013-14 dated 14.02.2018 and to quash the order passed therein and to direct the respondent to pass revised orders as per the decisions of the Hon'ble Supreme Court of India in the case of State of Tamil Nadu Vs.M/s.Devendran & Co., reported in [1996] 103 STC 95 (SC) and provide an opportunity of personal hearing and pass fresh orders under Section 3(4) of the TNVAT Act and to lift the bank attachment in this case.

For Petitioner : Mr.C.Bakthasiromoni

For Respondent : Mr.D.Ravichander
Government Counsel

ORDER

This writ petition has been filed against the impugned order dated 14.02.2018 bearing Ref.No.TIN.No.33134460080/2013-14.

2.It is the case of the petitioner that, they had purchased agricultural implements which are exempted in terms of IV Schedule to Tamil Nadu General Sales Tax Act, 1959 and therefore, they are not liable to tax. Earlier, the petitioner had filed a Writ Petition in W.P.No.14099 of 2017 and this Court, by an order dated 11.07.2017, allowed the same with the following observations:

> ''4.Taking into consideration the fact that the petitioner is a small dealer and his claim is that the what has been purchased by him are all exempted items, this Court is of the view that one more opportunity can be granted to the petitioner to file their objections and to produce necessary records before the exempted items.
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> 5. For the above reasons this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to submit their objections to the notice dated 14.03.2017 within a period of 15 days from the date of receipt of a copy of this order and also produce proof to show what are the types of "materials purchased by him from Palacode, Kerala State and one receipt of the objection, the respondent shall afford an opportunity of personal haring to the petitioner, examine the materials which has been purchased and if they are agricultural implements, extend the benefit of exemption and accordingly, redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous petition is closed.''

3.Pursuant to the aforesaid order, the respondent had issued Notice dated 28.09.2017 to the petitioner and once again called upon the petitioner to show cause as to why a sum of Rs.1,89,385/- should not be demanded as tax as against the proposed taxable turnover of Rs.37,87,802 and tax at 5% and after adding a sum of Rs.18,940/- paid by the petitioner why the balance amount is Rs.1,70,445/- should not be demanded from the petitioner. In response to the above notice, the petitioner filed a reply dated 24.10.2017. In paragraph 3, the petitioner has referred to the Invoice No.0000374, dated 15.06.2013 issued by M/s.Kumar Drop Forgings Private Limited, Palakkad, Kerala State, for a sum of Rs.6,116/-. The petitioner has not produced any other evidence either before this Court or before the Authorities to justify that the entire transaction was purchase of exempted goods namely agricultural implements. A mere production of a single Invoice for a sum of Rs.6,116/- is not sufficient to establish that the entire transaction in the taxable turnover of Rs.37,87,702/- was exempted. This writ petition is not maintainable as the petitioner has no case to substantiate the defence. It is open for the petitioner to establish the same before the Appellate Authority.

4.Considering the fact that, the petitioner had the benefit of stay of the recovery from 2017 onwards, liberty is given to the petitioner to file a statutory Appeal on the disputed tax amount within a period of thirty days from the date of receipt of a copy of this order. If such an Appeal is filed before the Appellate Commissioner within the aforesaid period together with the pre-deposit as is contemplated under the provisions of the TNGST Act, 1959, the Appellate Commissioner shall dispose of the Appeal on merits and in accordance with law. Liberty is also given to the petitioner to appear before the Appellate Commissioner.

5.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Chidambaram II Assessment Circle,
No.99-100, South Street,
Chindambaram- 608 081.

+1cc to the Special Government Pleader (Taxes), S.R.No.58351

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BP(CO)
SU(20/12/2021)