IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2478 of 2019
and
W.M.P.No.2759 of 2019
(Through Video Conferencing)

Tvl.Sri Dhanalakshmi Traders,
Represented by its Proprietor,
K.Govindan,
No.171, Market Street,
Shevapet,
Salem - 636 002.

...Petitioner

Vs

The Assistant Commissioner (CT) (FAC),
Shevapet Assessment Circle,
Salem.

...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33782642282/2010-11 dated 31.05.2017 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Amirtha Dinakaran,
Government Advocate.

ORDER

The impugned order has been passed purportedly in the exercise of power under Section 22 (3) of the TNVAT Act, 2006. Earlier, the petitioner was issued with a notice under the aforesaid provision for the Assessment Year 2010-11 on 10.01.2017. The petitioner appears to declared a taxable turnover of Rs.2,18,811/-. In the aforesaid notice, the respondent wanted to add an equal amount towards taxable turnover on the ground that the petitioner is not carrying on business after obtaining VAT registration and therefore, has unnecessarily been subjected to an order proceeding under Section 22 (3) of the TNVAT Act, 2006. The learned counsel for petitioner further submits that under Section 22 (3) of the TNVAT Act, the Commissioner may in any manner as may be prescribed for the purpose of details scrutiny regarding the correctness of the return submitted by a dealer subject to the assessment to revision. It is submitted that no notice was issued under Section 27 of TNVAT Act and the respondent directly proceeded to pass the impugned order.

2. Appearing on behalf of the respondent, the learned counsel for the respondent submitted that the impugned order is appealable under the provisions of TNVAT Act and therefore, the petitioner should be directed to file an appeal under the Appellate Commissioner. Alternatively, the learned counsel for the respondent further submits that the petitioner may be directed to file a reply by treating the impugned order as a show cause notice under Section 27 of the TNVAT Act.

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

4. The submission of the learned Government Advocate for the respondent is reasonable. Therefore, the impugned order, dated 31.05.2017 in TIN:33782642282/2010-11, stands quashed and the same shall be treated as a notice under Section 27 of the TNVAT Act, 2006. The respondent is also given liberty to issue a corrigendum to the same within a period of 30 days from date of receipt of copy of this order, particularly on the basis of the demand proposed.

5. The petitioner shall file a reply within a period of 30 days thereafter whether a corrigendum is issued or not. The respondent shall pass appropriate orders on merits and in accordance with law within a period of 30 days thereafter. In all, the entire exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order. Needless to state, before passing such order, the petitioner also shall be heard and also be given an opportunity to file additional representations if any.

6. The respondent shall consider the fact as to whether the petitioner was exempted from the payment of tax of the petitioner, considering the submission that the petitioner's turnover was less than Rs.5 lakhs in terms of Section 3 (1) of the TNVAT Act.

7. With the above observation, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

ssn/nst
To
The Assistant Commissioner (CT) (FAC),
Shevapet Assessment Circle,
Salem.

+1 CC to The Special Government Pleader(T) sr59176.

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and
W.M.P.No.2759 of 2019

KG(CO)
SP(02/12/2021)