IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.26267 OF 2011
AND
M.P.NO.1 OF 2011

Tvl.Kailayaa Agencies,
Represented by its Proprietor,
P.Jaganathan,
No.2/29-6-J, Palaniammal Complex,
Siddar Koil Main Road,
Sivadhapuram Bus Stop,
Salem – 636 307. ... Petitioner

Vs

The Assistant Commissioner (CT)(FAC)
Suramangalam Circle, Salem. ... Respondent

Prayer :

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the files of the respondent TIN:33132803999/2011-12, dated 22.09.2011 and quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondent : Mr.V.Nanmaran
Government Advocate

ORDER

The order in original dated 22.09.2011 passed by the respondent is under challenge in the present writ petition.

2. The petitioner states that they received notice dated 22.08.2011, proposing to assess the petitioner on the turnover of Rs.1,13,60,329/- representing sale of vegetable oils effected after 12.07.2011 at the rate of 5% and the petitioner infact submitted his reply on 12.09.2011, objecting the proposal for assessment on the ground that the turnover of Rs.1,13,60,329/- cannot be assessed for the reason that the said turnover being the turnover below the taxable limit of 5 Crores.

3. The learned counsel for the petitioner made a submission that the calculation made by the Department is not in consonance with the documents as well as the return filed by the petitioner company and there are discrepancies.

4. The learned Government counsel for the respondent relied on paragraph 6 of the counter affidavit filed by the respondent, which reads as under:

> "6. The petitioner, while objecting to the levy of tax on the sales of vegetable oils from 12.07.2011, has entirely relied on the decision of the Honourable High Court of Madras rendered in the case of K.K.Dhanuskodi Nadar Vs. State of Tamil Nadu (43 VST 183). This decision was rendered in the context of the levy of Additional Tax on the taxable turnover. This decision was rendered when as amendment was introduced to the Additional Sales Tax 1970 to the quantum of the turnover as well as the rate of Additional Tax. This decision is not relevant to the petitioner's case. The impugned proceedings was passed citing the definitions of the expression "Total turnover" in Section 2(40) of the TNVAT Act and drawing light from the celebrated decisions of the Honourable Supreme Court rendered in the case of M.K.Kandasami (36 STC 191) and Hoechst term (total turnover) is only for the purpose of indentifying the class of dealers liable to be taxed under the Act Classifying the dealers into those who are economically superior and those who are not."

5. This Court is of the considered opinion that such discrepancies in the matter of turnover is to be adjudicated in a complete manner with reference to the documents as well as the evidences on record. Such an exercise cannot be done in a writ proceedings under Article 226 of the Constitution of India. Admittedly, the order impugned is an order, against which, a Revision lies and the petitioner has not preferred any such revision as stated in the impugned order.

6. The importance of an alternate remedy provided under the Statute at no circumstances be undermined as the Revisional authorities or the Appellate authorities are the final fact finding authority and their findings regarding the facts are of greater assistance for the purpose of exercise of power of judicial review by the High Court in a writ proceedings. Thus certain intricacies as well as the facts relatable to turnover etc., are require an adjudication and for this purpose, the petitioner ought to have prepared a Revision petition as they claim that there are discrepancies even regarding the allegations stated in the show cause notice.

7. This being the factum established, this Court is of an opinion that the petitioner has to prefer a Revision, setting out the facts as well as the legal grounds and redress their grievances in the manner known to law. Accordingly, the petitioner is at liberty to prefer Revision within a period of six weeks from the date of receipt of a copy of this order in the prescribed manner and by complying with the provisions of the Act and the Rules and in the event of receiving any such Revision Petition from the petitioner, the Revisional authority shall condone the delay, if any in filing the Revision Petition and entertain the same, dispose of the Revision Petition on merits and in accordance with law and by affording opportunity to the writ petitioner as expeditiously as possible.

8. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)(FAC)
Suramangalam Circle, Salem.

2. The Section Officer,
ER Section, High Court,
Madras-104.

(for returning the Original impugned order)

+1cc to M/s.Aparna Nandakumar, Advocate, S.R.No.37809
+1cc to the Government Pleader, S.R.No.37427

W.P.No.26267 of 2011

NRL(CO)
CS/18/08/2021
CS/26/08/2021