IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.04.2021
CORAM:
THE HON'BLE MR.JUSTICE C.SARAVANAN
W.P.No. 17707 of 2016
and
W.M.P.No. 15411 of 2016

Tvl.Muthuraman Enterprises,
Represented by its Proprietrix,
T.SP.M.Valliyammai Achi,
No.42, Anderson Street,
Chennai - 600 001. ... Petitioner

Vs

The Assistant Commissioner (CT),
Kothavalchavadi Assessment Circle,
Chennai - 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in TIN.No.33320201336/2013-14 dated 28.3.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and further direct the respondent to pass order afresh as requested vide representation dated 15.4.2016.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.R.Swarnavel
Government Advocate

ORDER

The petitioner has challenged the impugned order dated 28.03.2016.

2. By the impugned order, the taxable turn over has been determined as Rs.18,37,435/- and the tax due on the aforesaid amount has been determined as Rs.2,66,428/- as detailed below:-

Turnover now determined	: Rs.18,37,435.00
Tax due now levied	: Rs. 2,66,428.00
Tax on reversal of credit	: Rs. 2,56,826.00
Total tax due	: Rs. 5,23,254.00
Tax Paid	: Rs. 0.00
Balance	: Rs. 5,23,254.00

Revised Notice in Form O is issued.

3. The impugned order precedes a notice dated 14.01.2016, pursuant to the verification of Form-WW filed by the petitioner. In the said notice, it was proposed to include the amounts received as other income and discount received by the petitioner. The said notice reads as under:-

"On verification of form WW the dealer have reported shown as other income for Rs.18,37,435/- under the VAT Act for the year 2013-2014. The other income are liable for tax 14.5%. Hence dealers are requested to file the details for other income for Rs.18,37,435/-.

Further they have reported in form WW that they have received discount for Rs.17,71,211/- under the VAT Act 2006 for the year 2013-2014. The discount received are liable for reversal of ITC under section 19(20) of the VAT Act 2006. Hence the ITC is reversed as follows:-

1) Other income Rs.18,37,435/- x 14.5% = Rs.2,66,428/-
2) Discount received s.17,71,2111/-x14.5% = Rs.2,56,826/-

Total tax effect = Rs.5,23,254/-

Objections if any to the above proposals may be filed within 7 days from the date of receipt of this notice, otherwise will be passed as proposed in the notice.

Assistant Commissioner (CT) (FAC)
Kothavalchavadi Assessment Circle"

4. The petitioner replied with the said notice, which reads as under:-

"1) We are in receipt of your above letter
2) In this connection we wish to state the following:

a) Cash discount received Rs.17,71,211/-
This amount is nothing connected with the Sales

b) Other income Rs.18,37,435/-

It comprises as:

Commission received from) Rs.18,27,754/-
Seshasayee Paper & Boards Ltd.)
Miscellaneous such as credit folios written off)
Bad debts recovered etc.) Rs. 9,681/-

Rs.18,37,435/-

From the above it is clear that for the cash discount received and commission received the provisions of the TNVAT is not applicable.

From the foregoing submissions, we request you to kindly drop the proceedings initiated."

5. Based on the above reply of the petitioner, the impugned order has been passed. The operative portion of the impugned order has already been extracted above.

6. Considering the fact that skeleton and sketchy order came to be passed by the respondent, the petitioner filed an application for rectification of the impugned order dated

28.03.2016 before the respondent on 15.04.2016 by way of abundant caution by invoking the power to rectify the order under Section 84 of the VAT Act and thereafter filed the present writ petition. I see no purpose in keeping the writ petition pending. Considering the fact that the petitioner has filed a rectification application under Section 84 of the TNVAT Act, 2006, I direct the respondent to dispose the same on merits in accordance with law.

7. Therefore, I dispose this writ petition by directing the respondent to pass appropriate orders on merits in the rectification application filed by the petitioner. Appropriate orders may be passed in accordance with law after hearing the petitioner within a period of three months from the date of receipt of a copy of this order.

8. Pending disposal of the rectification application, the respondent shall maintain the status quo as far as the recovery is concerned. The petitioner is given liberty to file additional grounds and additional documents in support of the case for rectification.

9. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

arb
To:
The Assistant Commissioner (CT),
Kothavalchavadi Assessment Circle,
Chennai - 600 001.

+1 cc to Spl Government Pleader Sr.No. 22010

W.P.No. 17707 of 2016
and
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A.SK(18.05.2021)