IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 22379 of 2016
and
W.M.P. No. 19086 of 2016

Tvl.Ajantha Agencies,
Represented by its Proprietor,
No.22, I Ward, Block 30,
Neyveli - 607 807. ... Petitioner

-vs-

The Deputy Commercial Tax Officer (Addtl),
Virudhachalam. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in Assessment Order in TIN 33044424094/2014-15 dated 29.04.2016 and quash the same as illegal and unconstitutional and also to direct the respondent to grant an opportunity to the petitioner as provided under Section 22(4) of the TNVAT Act to produce their books of accounts and to verify the same before passing fresh orders of assessment.

For Petitioner : Mr.G.V.Amrit
for Mr.R.Ganesh Kanna

For Respondent : Mr.V.Nanmaran
Government Advocate

O R D E R

The relief sought for in the present Writ Petition is to call for the records in respect of the Assessment Order dated 29.04.2016 and quash the same and also grant an opportunity to the writ petitioner as provided under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006.

2. The petitioner firm is a dealer in Flyash, Coal, Raw Lignite and Cement and are an assessee in the books of the respondent. They are filing monthly returns punctually paying the taxes without any default.

3. The respondent has passed an order for the Assessment Year 2014-15 dated 29.04.2016 as per Section 22(2) of the Tamil Nadu Value Added Tax Act. It has been alleged that the petitioner firm had failed to file its monthly returns in Form-I for the Assessment Year 2014-2015 on or before 20.05.2015 and upon verification of the departmental website, it was alleged that the petitioner made local purchases from its registered dealers.

4. It is brought to the notice of this Court that the issue raised in the Writ Petition on hand was elaborately adjudicated by this Court in a batch of Writ Petitions in W.P. No. 105 of 2016 etc., and the judgment was delivered on 01.03.2017. The relevant paragraphs of the judgment are extracted hereunder:

> "56. The procedure adopted under the Maharastra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective Assessing Officers without even the knowledge of the Assessing Officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at

fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise the plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s.Lakshmikumaran and Sridharan Attorneys. Consequently, connected Miscellaneous Petitions are closed. No costs."

5. In view of the findings in the judgment cited supra, impugned order passed by the respondent in proceedings No.TIN 33044424094/2014-15 dated 29.04.2016 is quashed and the matter is remanded back to the respondent for fresh consideration and the petitioner / dealer is not entitled to raise the plea of limitation, when fresh show cause notices are issued and the petitioner is directed to submit their explanation to enable the Assessing Officers to adjudicate their case.

6. With these directions, this Writ Petition is allowed.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer (Addtl),
Virudhachalam.

+1cc to the SPL Government Pleader, S.R.No.38961

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GPL(CO)
CT(26/08/2021)