IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.13788 of 2014
and
M.P.No.1 of 2014

M/s.Thirumurugan and Company,
Represented by its Proprietor,
No.11/1, Aziz Mulk 4th Street,
Chennai - 600 006. ... Petitioner

Vs

Commercial Tax Officer,
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No.33880460503/2011-12 dated 12.05.2014 and quash the order passed therein and to direct the respondent to pass revised orders pursuant to section 3(4) of the TNVAT Act, 2006 under compounding scheme.

For Petitioner : Mr.C.Bakthasiromoni

For Respondents : Mr.V.Veluchamy
Government Advocate

O R D E R

The order impugned dated 12.05.2014, is an order of revision of assessment for the year 2011 - 12.

2. The petitioner is a dealer in cell phone and consumer products and had been regularly filing monthly returns in Form K for the assessment year 2011 - 12 under TNVAT Act and reported a total and taxable turnover of Rs.56,75,228/-. The petitioner had opted Section 3 (4) of the TNVAT Act for payment of tax under compounding scheme at 0.5% tax on the sales. The petitioner was

issued with notice on 31.01.2014 and he filed a reply on 20.02.2014. The petitioner further submits that the respondent has accepted the monthly returns at concessional rate and passed deemed assessment orders and now denying the concessional rate of tax after a long gap of one year. If at all the petitioner is not eligible, the respondent should have informed the petitioner for denial of the concessional rate at the beginning of the financial year itself and now it is not possible for the petitioner to collect higher rate of tax from their customers. Hence, the petitioner constrained to move the present writ petition.

3. It is not in dispute that against the impugned notice the statute contemplates the revision, to be filed under Section 54 of the Act. Admittedly, the petitioner has not filed any such revision and has chosen to file the present writ petition exhausting the statutory remedy contemplated, which is of paramount importance. In view of the fact that the High Court cannot adjudicate the disputed facts with reference to the documents and evidences under Article 226 of the Constitution of India, the writ petitioner has to exhaust the revisional remedy provided under the Statute for adjudication of facts. The Revisional Authority is the fact finding authority, therefore, conduct an enquiry with reference to the original records.

4. This being the factum, the petitioner has to exhaust the remedy provided under the statute by filing the Revision Petition under Section 54 of the Act. The petitioner is at liberty to file the Revision within a period of six weeks from the date of receipt of a copy of this order and in the event of filing any such revision, the Authority Competent is empowered to consider the same on merits and pass orders as expeditiously as possible, in accordance with law by affording opportunity to the writ petitioner.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Pns

To

1.Commercial Tax Officer,
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031.

2.The Section Officer,
E.R.Section,
High Court, Madras.

+1cc to Mr.C.Baktha Siromoni, Advocate (SR No.34231)

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and
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GP (CO)
PR (18/08/2021)