IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.24610 of 2021
and
W.M.P.No.25878 of 2021

Tvl.Carpenters Classics India Pvt Ltd
Rep.by its Director:
Ravi Karumbiah
No.370-375,S.N.Chetty Street,
Tondiarpet, Chennai - 600 081. ... Petitioner

Versus

The State Tax Officer
Tondiarpet Assessment Circle
No.32, Elephantgate Police Station Bridge Road
Vepery, Chennai - 600 003 ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in respect to order passed in CST.33951202175/2014-15 dated 01.10.2021 and quash the same as illegal and against the principles of natural justice.

For Petitioner : Mr. P. Prithvi Chopda

For Respondent : Ms.Amirta poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has challenged the impugned assessment order dated 01.10.2021 for the assessment year 2014-15. By the impugned assessment order, the respondent has determined the tax payable by the petitioner as Rs.6,56,812/- being the differential amount of tax and penalty under Section 27 (3) (c) of the TNVAT Act, 2006.

2. It is the case of the petitioner that the petitioner had effected a stock transfer to its depot for a turnover of Rs.1,51,13,422/- and had partially produced Form F from the depot located outside the State. It is submitted that since the passing of the impugned order, the petitioner has further obtained Form F covering a turnover of Rs.32,68,439/- and therefore, the impugned order has to be revised.

3. The learned counsel for the petitioner further submits that there is no case made out for suppression of facts as the petitioner has declared the turnover in the returns except that Form F could not be procured from the other State. It is further submitted that the petitioner also lost some of the Forms during December 2015 flood and also requested the Sales Tax Department from the other State to furnish Form F.

4. Opposing the prayer, the learned counsel for the respondent submitted that the petitioner has an alternative remedy under Section 51 of the TNVAT Act by filing an appeal before the Appellate Commissioner and also an alternate remedy under Section 84 of the TNVAT Act for revision of the order and there is no limitation for producing these forms. The learned counsel for the respondent has also placed reliance on the decision of the Hon'ble Full Bench of this Court, in State of Tamila Nadu Vs. Arulmurugan and Company reported in 1982 (51) STC 381 FB, wherein, the Full Bench of this Court considered the issue in the context of C Form under Central Sales Tax Act, 1956. A specific reference was made in paragraph 20 of the above judgment, which reads as under:

> ''20. We may now turn to the facts of each of the two individual references before us. In both the cases, the assessee concerned did not file C forms with the assessing authority before the completion of the assessments. Naturally, therefore, the turnovers in question were charged to tax at the rate of 10 per cent, instead of at the concessional rate of 4 per cent. Both the assessees appealed against their respective assessments. In both the cases, leave to file the relevant C forms was asked for, at the appellate stage. The Appellate Assistant Commissioner, however, declined to receive the C forms, and confirmed the assessments. On further appeal before the Tribunal, the assessees produced the C forms once again. At this stage, the Tribunal entertained them. While doing so, the Tribunal felt satisfied that there was sufficient cause for not

filing the C forms before the assessments were over. The final orders of the Tribunal, however, were different in the two cases. In one case, the Tribunal set aside the assessment and directed the assessing authority to make the assessment afresh on the basis of the C forms received at the appellate stage. In the other case, without setting aside the assessment, the Tribunal forwarded the C forms to the assessing authority, directing that authority to scrutinise the C forms and find out if they complied with the formalities.''

5. Heard the3.05cm learned counsel for the petitioner and the learned Government Advocate for the respondent and perused the impugned order and the notice that preceded the issue of the impugned order. The petitioner has also filed form F for a value of Rs.32,68,439/-. The correctness of those form F cannot be determined under Article 226 of the Constitution of India as the scope of interference under Article 226 is limited with wide powers. Considering the same, liberty is given to the petitioner to work out the alternate remedy, either under Section 51 of the TNVAT Act or under Section 84 of the TNVAT Act, within a period of 30 days from the date of receipt of a copy of this order. Registry is directed to return the original impugned order to the petitioner.

6. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ssn
To

The State Tax Officer,
Tondiarpet Assessment Circle,
No.32, Elephantgate Police Station Bridge Road,
Vepery, Chennai - 600 003.

Copy to

The Section Officer,
E.R Section,
High Court, Madras-104.
(To return the Original impugned order)

+1cc to the Special Government Pleader Sr.62799

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srg 27/12/2021