BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11309 of 2019

and

W.M.P.(MD)Nos.8628 & 8629 of 2019

Tvl.Shri Alagappa Distributor,
Represented by Proprietor R.Saravanan,
Door No.25, Gandhi Nagar,
Chinnandan Kovil Road,
Karur District. ... Petitioner

-Vs-

The Assistant Commissioner (ST)
Karur West Circle,
Karur. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the respondent for the assessment year 2017-18 vide proceeding No. TIN No.33343785766/2017-18, dated 06.03.2018 and TIN No.33343785766/2013-14 to 2016-17, dated 05.04.2019, quash the same and to direct the respondent to re-do the assessment without influence of the proposal of the Enforcement Authority, after giving adequate opportunity to the petitioner.

For Petitioner : M.Raja Karthikyean
For Respondent : Mr.S.Dhayalan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondent. The assessment years pertain to 2017-18. The petitioner's business premises were inspected and based on the same, notice was issued on 19.01.2018. The petitioner gave their reply. Not satisfied with the same, the order set out in the notice was confirmed as such. The same is assailed in this writ petition.

3.The learned counsel appearing for the petitioner points out that if according to the assessing authority, the returns filed by the petitioner was incorrect or incomplete, then, the procedures set out in Section 25 of the TNVAT Act ought to have been followed.

4.Section 25 of the TNVAT Act, reads as follows:-

> "25.Procedure to be followed in assessment of certain cases. (1) If no return is submitted by the dealer under Section 21 within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquiry as it considers necessary, determine the tax payable by the dealer to the best of its Judgment:
>
> Provided that, before taking action under this sub-section on the ground that the return submitted by the dealer is incomplete or incorrect, the dealer shall be given a reasonable opportunity of proving the correctness or completeness of the return submitted by him."

5.In the case on hand, the respondent has not invoked Section 25 of the TNVAT Act. Instead what has been invoked is Section 22(4) of the TNVAT Act and penalty has also been levied under Section 22 (5) of the Act.

6.Section 22(4) of the TNVAT Act reads as follows:-

> "22.Deemed Assessment and procedure to be followed by the assessing authority:-
>
> 4.If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiries as it may consider necessary, assess the dealer to the best of its Judgment, subject to such conditions as may be prescribed, after the completion of that year.
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard."

7.A mere reading of the said provision would indicate that the said provision will come into play only after the expiry of the concerned assessment year. The said provision namely Section 22(4) of the Act cannot be invoked during the middle of the assessment year. Therefore, there is a jurisdictional error committed by the respondent. On this sole ground, the order impugned in this writ petition is quashed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner (ST)
Karur West Circle,
Karur.

+1 CC to M/s.SPL GP (SR-6166[F] dated 19/02/2021)

+1 CC to M/s.RAJA.KARTHIKEYAN, Advocate (SR-6243[F] dated 19/02/2021)

W.P.(MD)No.11309 of 2019
18/02/2021

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