BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:16.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.155 of 2019 and W.M.P.(MD)No.136 of 2019

Tvl.Deekay Sales Corporation,
Rep. by its Kartha: M.Uttamchand,
No.91, Amman Sannathi Street 1st Floor, Madurai. :Petitioner

-Vs-

The Assistant Commissioner (CT)(FAC),
Vengalakadai Street Assessment Circle,Madurai. :Respondent

PRAYER:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33314800839/2010-11, dated 13.06.2018, quash the same and further, direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the notice dated 15.03.2018 and after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.G.Arjunan, Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2010-11. The petitioner's assessment was finalised on deemed assessment basis under Section 22(2) of TNVAT Act, 2006. When the assessment records were subsequently scrutinized, certain discrepancies were noticed. Therefore, the respondent issued pre-revision notice dated 15.03.2018. The petitioner did not offer any reply. Thereafter, the personal hearing notice was also issued on 10.05.2018. That also, the petitioner did not attend. The respondent was therefore left with no other option but to pass the impugned order conforming the proposal set out therein. Questioning the same, the writ petition has been filed.

3.Even at the out set, the learned counsel for the petitioner fairly brought it to my notice that even though the order was passed on 13.06.2018, the writ petition was filed only after the expiry of the limitation period. The petitioner did not avail the appeal remedy. However, in view of the recent Division Bench decision of the Madras High Court in *W.A.No.493 of 2021(Mahindra & Mahindra Ltd., Vs. Joint Commissioner (CT))*, notwithstanding the bar of limitation for availing appeal remedy, the Writ Court can entertain, if substantial grounds are raised.

4.The case of the respondent rests on mismatch. In other words, when the petitioner's returns were compared with the annexure filed by the other end dealer in the departmental website, the discrepancies came to light. On that basis, the proceedings have been initiated.

5.As rightly pointed out by the petitioner's counsel, in such a case, the procedure laid down in *J.K.M.Graphics Solution Private Limited Case,* should have been followed. Enquiry must have been conducted with the other end dealer. Such a procedure was not adopted in this case.

6.Therefore, on this ground, the order impugned in the writ petition is quashed. The Writ Petition is allowed. No costs. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The connected miscellaneous petition is closed.

7.The learned counsel for the petitioner further informs the Court that 10% of the tax amount was already paid pursuant to the condition imposed by this Court, while granting interim order. The payment of the said amount will abide by the final order to be passed by the respondent following this remand order.

Sd/-

ASSISTANT REGISTRAR(RTI Act)

/TRUE COPY/

/ /2021

SUB ASSISTANT REGISTRAR(CS)

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 (CT)(FAC),
Vengalakadai Street Assessment Circle,Madurai.
+1 CC to M/s.A.CHANDRASEKARAN,Advocate(SR-11389[F]dated16/03/2021)
+1 CC to M/s.SPL GP (SR-11976[F] dated 17/03/2021)
rmi (PA) DKS (CO)
RP/12.05.2021/2P/4C.

W.P.(MD)No.155 of 2019 and W.M.P.(MD)No.136 of 2019
16.03.2021