BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.10.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.9829 of 2019
and
W.M.P.(MD)No.7726 of 2019
(through video conference)

Tvl.Maruthi Hospital,
(A unit of Anjana Medicare Services Pvt. Ltd.),
Represented by its Managing Director,
No.95, Pattabiraman Street,
Tennur, Trichy. ... Petitioner

-Vs-

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Trichy. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33163443746/2014-15 dated 28.03.2018 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass an assessment order afresh under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.S.I.Muthiah
For Respondent : Mr.R.Suresh Kumar
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records in TIN 33163443746/2014-15 dated 28.03.2018 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass an assessment order afresh under the Tamil Nadu Value Added Tax Act, 2006.

2.The petitioner has moved the present writ petition challenging the order of the re-assessment passed by the respondent revenue dated 28.03.2018 under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

3.In this regard, the learned Counsel appearing for the petitioner tried to convince this Court that a sum of Rs.1,47,122/- alone should be paid by the petitioner as per the Auditor’s advice, which had been paid by way of cheque and the same has also been realized by the respondent, without taking into account, the present impugned order has been passed.

4.However, the learned Government Advocate appearing for the respondent, on instructions and by relying upon the reasons stated in the impugned order, would submit that, it is not merely on basis of the Audit report, but, this conclusion has been arrived at by the respondent, based on the inspection conducted in this regard. Certain things have been unearthed and based on which, it was found that certain turnover has not been stated or does not form part of the return submitted by the petitioner. Therefore, the respondent proposed to assess the turnover and levy tax under Section 22(1) of Tamil Nadu Value Added Tax Act, 2006, which has been reflected in the impugned order.

5.I have considered the said preliminary submissions made by both sides and since these submissions arise out of the minute details with regard to the factual matrix of the case, that kind of issues cannot be decided purely on the facts, by this Court under Article 226 of the Constitution of India. Therefore, this Court feels that while rejecting the plea raised by the petitioner against the impugned order in this writ petition, the petitioner can be relegated to approach the appellate authority to file a regular appeal as against the impugned order.

6.In view of the above, this writ petition is not entertained against the impugned order. Therefore, it is rejected on the ground of non-exhausting remedy of appeal, where alone the factual disputes can be resolved.

7.Accordingly, the petitioner is relegated to file an appeal against the impugned order and if such an appeal is filed within two weeks from the date of receipt of a copy of this order, the period during which the writ petition was pending before this Court can be excluded for the purpose of limitation, if any. Accordingly, the appeal shall be entertained by the respondent and decided on merits and in accordance with law.

8.With these observations and directions, this writ petition is rejected and accordingly, dismissed. However there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

// 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 (CT),
Woraiyur Assessment Circle,
Trichy.

+1 CC to M/s.SPL.GP (SR-31024[F] dated 04/10/2021)

W.P.(MD)No.9829 of 2019
01.10.2021

PS(CO)
KB(19.11.2021) 3P 3C