BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.08.2021**
CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14414 of 2021
and
W.M.P.(MD)Nos.11345 and 11346 of 2021

G.Pare ... Petitioner

Vs.

The Assistant Commissioner (ST),
Thiruparankundram Circle,
Madurai-20. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in TIN:33706230938/2012-13 dated 26.02.2021 and quash the same as arbitrary.

For Petitioner : Mr.R.Aravindan
For Respondent : Mr.R.Sureshkumar
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in TIN:33706230938/2012-13 dated 26.02.2021 and quash the same.

2.It is the case of the petitioner that the petitioner is a Contractor doing works in contract for various persons including Southern Railway and he has got TIN No.33706230938/2012-13. Periodical return claims to have been filed by the petitioner and remitted the tax amount.

3.Insofar as the assessment year 2012-13, the petitioner had conduced work for Southern Railways for total estimation of Rs.81,41,458/-. A sum of Rs.1,62,829/- was deducted as TDS amount, that is, Tax Deducted at Source, by the Railways and remitted the same to the account of the respondent. The said amount was deducted and paid as per the terms of the relevant provisions of the Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "TNVAT Act" in short].

4.However, after several years, for the assessment year 2012-13, the respondent issued a pre-revision notice as if the petitioner has suppressed the other turnovers and on that basis, the impugned order dated 26.02.2021 was passed by fixing a total sum of Rs.98,61,690/- and assessed the tax at Rs.3,45,159/- without any basis.

5.In this context, it is the further case of the petitioner that except pre-assessment notice, dated 21.01.2021, no prior notice had been given. However, in this regard, Mr.R.Aravindan, learned counsel appearing for the petitioner has pointed out that since it relates to the assessment year 2012-13, there has been six years limitation, beyond which, now the pre-assessment notice dated 21.01.2021 has been issued. Therefore, the entire pre-assessment has been vitiated. On that ground itself, the learned counsel appearing for the petitioner seeks indulgence of this Court to interfere with the impugned order.

6.Instead of filing an appeal, the petitioner has chosen to approach this Court by filing the present writ petition challenging the pre assessment order. In order to verify the stand taken by the learned counsel for the petitioner that the impugned order is barred by limitation as the assessment year 2012-13 and therefore, within a period of six years, the present impugned order or the pre-assessment notice ought to have been issued by the respondent, this Court, by order dated 13.08.2021, directed the learned Government Advocate appearing for the respondent to produce the original files. Accordingly, the files had been produced by the respondent, where the learned Government Advocate appearing for the respondent points out that on 24.06.2016 itself, pre-assessment notice was issued for the assessment year 2012-13 and final notice was issued on 28.10.2016 and on various other dates and a reply had been given by the petitioner assessee on 11.10.2019 and thereafter, a personal hearing notice was issued by the respondent revenue on 30.10.2019 and that has also been answered by the petitioner itself, by reply dated 05.11.2019.

7.Looking into the proceedings/correspondences between the petitioner and the respondent taken place, which are available in the original records, which were perused by me, the said argument advanced by the learned counsel for the petitioner that the impugned proceedings or pre-assessment notice is vitiated because of barred by limitation does not have any basis. Therefore, on that ground, the petitioner cannot have a successful challenge against the impugned order and moreover, the petitioner cannot have a direct access to this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution, by filing the present writ petition, without exhausting appeal remedy, under the provisions of the TNVAT Act.

8.On the side of the merits, the learned counsel appearing for the petitioner is still reiterating apparently that Tax Deducted at

Source by the Southern Railways had been paid in the account of the respondent and the same had not been considered by the respondent, while making the impugned assessment. Therefore, on that ground itself, the issue can be concluded, he contended.

9.I am not impressed with the said submissions of the learned counsel appearing for the petitioner, since the merits of the case have to be decided by the appellate authority and the first appellate authority, being the fact finding body, before whom, the appeal can very well be filed by the petitioner assessee. Therefore, without entertaining this writ petition for the aforesaid prayer, this Court feels that the petitioner can be relegated to file an appeal, where the appellate authority can very well look into all these aspects or grounds raised by the petitioner including the ground that the Tax Deducted at Source amount has not been taken into account and accordingly, order can be passed by disposing the appeal to be filed by the petitioner assessee.

10. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:-

> that the plea raised by the petitioner to have a successful challenge against the impugned order on the ground of barred by limitation does not hold good. Therefore, that ground is rejected. Consequently, the petitioner is relegated to approach the appellate authority against the impugned order and without having expressed any opinion on the merits and demerits of the case as claimed by both sides as against the impugned order or pre-assessment, the petitioner will have liberty to file an appeal before the appellate authority and if any such appeal is filed by the petitioner, the appellate authority shall decide the same on merits and in accordance with law.

11. With these observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST),
Thiruparankundram Circle,
Madurai-20.

+1 CC to M/s.GP (SR-26630[F] dated 18/08/2021)

W.P.(MD)No.14414 of 2021
17.08.2021

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