BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.03.2021
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6897 of 2018
and
W.M.P.(MD)No.6625 of 2018

Tvl.Weather Maker,
Represented by its Proprietor,
S.Mohammed Anwar, aged about 69 years,
No.78, P.R.Complex,
TPK Main Road, Andalpuram,
Madurai-625 003.
... Petitioner

-Vs-

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Deputy State Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned proceedings of the second respondent in TIN: 33135024814, 2014-15, dated 28.02.2018 and quash the same.

For Petitioner : Mr.B.Rooban
for Mr.Raja Karthikeyan

For Respondents : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the second respondent. The case on hand pertains to the assessment year 2014-15. The petitioner's assessment was finalised on deemed assessment basis under Section 22(2) of TNVAT Act, 2006. The assessing authority called for the petitioner's book of accounts and after scrutinizing the same, the pre-revision notice was issued on 18.12.2017. The petitioner offered his objections. Thereafter, the impugned order came to be passed levying tax and penalty. Challenging the same, this writ petition came to be filed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the same and wanted this Court to sustain the impugned order.

4.I carefully considered the rival contentions and went through the materials on record.

5.Even before commencing his argument, the petitioner's counsel submitted that the petitioner would remit 10% of the disputed tax amount before the second respondent on or before 31.03.2021. This would be without prejudice to the petitioner's contentions and if this Court remands the matter, remittance to be made by the petitioner on or before 31.03.2021 will abide by the outcome of the remand order to be passed by the second respondent after remand. This undertaking given by the petitioner through his counsel is placed on record.

6.The petitioner is engaged in trading of LLOYD Air Conditioners. The case of the petitioner is that the petitioner had also been doing maintenance contract. For the said service rendered by the petitioner, the petitioner was paid the charges. According to the petitioner, the said amount of charges would represent the petitioner's income and that it would not fall within the purview of TNVAT Act. In fact, for the charges paid to the petitioner, TDS had also been effected. The petitioner had filed additional type set of papers, in which, the materials to this effect has been enclosed.

7.The petitioner would claim that these materials were originally placed before the assessing authority also. I must however record that there is no clear proof evidencing the same. Be that as it may, it appears that in the impugned order, atleast a portion of the amount that represents the petitioner's income amenable to income tax, has been included for the purpose of computing the petitioner's turnover under TNVAT Act. That apart, another defect pointed out by the assessing authority rests on mismatch. However, the procedure laid down in *J.K.M.Graphics Solution Private Limited case*, was not followed.

8.On these twin grounds, I am of the view that the order impugned in this writ petition is to be set aside. Accordingly, it is set aside. The Writ Petition is allowed. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. The petitioner is directed to adhere to the undertaking given earlier. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// 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

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Deputy State Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+1 CC to M/s.B.ROOBAN, Advocate (SR-12702[F] dated 22/03/2021)

+1 CC to M/s.SPL GP (SR-12750[F] dated 22/03/2021)

W.P.(MD)No.6897 of 2018
and
W.M.P.(MD)No.6625 of 2018
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SDS(24.04.2021) 3P 5C