BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.17719 of 2016 & 20811 of 2019
and
WMP(MD)Nos.12755 of 2016 & 17407 of 2019

Tvl.Sri Krishna Electricals,
Rep.by its Proprietrix,
C.Malathi ... Petitioner in both cases

Vs.

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

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001. ... Respondents in both cases

Prayer in WP(MD)No.17719 of 2016 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to rectify the errors in his order in TIN 33295480238/2013-14 dated 08.07.2016 by considering the petitioner's petition dated 12.08.2016.
(Prayer is amended as per of the order of the court on 19.02.2021).

Prayer in WP(MD)No.20811 of 2019 : Writ petition is 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 second respondent in TIN : 33205482373/2013-14 dated 13.09.2019 and Assessment No.33205482373/2013-14 (wrongly mentioned as Assessment No.33295480238/2012-13) dated 08.07.2016 and quash the same and consequently direct the 2nd respondent to re-do the assessment afresh by giving adequate opportunity to the petitioner.

In both cases :

For Petitioner : Mr.B.Rooban
For Respondents : Mr.S.Dhayalan,
Government Advocate

O R D E R

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the second respondent. The petitioner opted to pay at the compounded rate of tax under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006. The statutory position is to the effect that if during the given assessment year, the turn over exceeds Rs.50.00 lacs, the dealer is automatically disqualified from coming under the compounded rate of tax for the next assessment year. The case on hand pertains to the assessment year 2013-14. The petitioner was served with a notice that his turn over for the year 2012-13 had crossed the ceiling limit of Rs.50.00 lacs. The petitioner offered his reply. Without finalizing the said issue as regards 2012-13, the assessing authority chose to pass an order holding that the petitioner will not be eligible to pay at the compounded rate of tax and he has to pay the original rate of tax.

3.I am of the view that this order dated 08.07.2016 suffers from an error apparent on the face of record. The petitioner filed a petition under Section 84 of the Act. Seeking direction for consideration of the said petition, WP(MD)No.17719 of 2016 was filed. Without considering the said issue, the petition under Section 84 of the Act came to be rejected. That is put to challenge in WP(MD)No.20811 of 2019. In the meanwhile, the authority passed an order holding that the turn over of the petitioner for the assessment year 2012-13 was below Rs.50.00 lacs. This order was passed on 29.09.2016.

4.It is relevant to note that the order under Section 84 of the Act was passed without taking note of the order dated 29.09.2016. The sheet anchor of the impugned proceedings is that the petitioner's turn over has crossed Rs.50.00 lacs during the assessment year 2012-13. If the authority himself has passed an order on 29.09.2016 holding that the ceiling limit was not crossed, the very basis of the impugned order goes.

5.Therefore, on this sole ground, the order impugned in WP(MD) No.20811 of 2019 is quashed. WP(MD)No.20811 of 2019 is allowed. The second respondent is directed to rectify the order dated 08.07.2016 in terms of his own proceedings dated 29.09.2016. Such an order will be passed within a period of eight weeks from the date of receipt of copy of this order. WP(MD)No.17719 of 2016 is also allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,No.50/52, Jawahar Street,
Karaikudi - 630 001.

+1 CC to M/s.SPL GP (SR-6493[F] dated 22/02/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-6592[F] dated 23/02/2021)

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