BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.25052 of 2016
and
W.M.P.(MD)No.18131 of 2016

M/s.K.R.T.Motors (P) Ltd.,
Rep. by its Managing Director Mr.K.R.Venkatesan,
No.16, New Karur Bye Pass Road,
Thillai Nagar,
Tiruchirappalli-620 018.
... Petitioner

-Vs-

1.The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli.

2.The Branch Manager,
HDFC Bank,
Thillai Nagar Branch,
Tiruchy.
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the first respondent proceedings in TIN No.33273442667/2015-16, dated 25.11.2016 and quash the same being violated the principles of natural justice, illegal, invalid and against the law and also law laid down by this Court.

For Petitioner	:	Mr.D.Vijayakumar
For R1	:	Mr.S.Dhayalan Government Advocate
For R2	:	Mr.C.Muthu Saravanan

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondent. The petitioner has been dealing in two wheelers. The first respondent issued notice dated 08.08.2016 proposing to take action under Section 22(4) and (5) of TNVAT Act. The first respondent had taken the stand that the returns filed by the petitioner are incomplete and incorrect. Therefore, it was proposed to assess the petitioner on best Judgment assessment basis. The petitioner submitted their reply dated 23.08.2016. After affording an opportunity of personal hearing, the impugned order dated 25.11.2016 came to be passed. The petitioner's bank account with the second respondent bank was also attached on 26.12.2016. These proceedings are under challenge in this writ petition.

3.The respondents have filed a detailed counter affidavit and the learned Government Advocate took me through its contents and wanted me to sustain the impugned order and dismiss the writ petition. The learned Government Advocate also pointed out that the petitioner has not exhausted the appeal remedy available to them.

4.I carefully considered the rival contentions and went through the materials on record. There is no doubt that action has been taken under Section 22(4) and Section 22(5) of TNVAT Act. To do so, action could have been initiated only after 31.10.2016. But then, show cause notice was issued in the month of August 2016 itself. In this case, the petitioner has been filing their returns on self assessment basis under Section 22 of the Act. The dealer will be deemed to have been assessed on 31st day of October. The case on hand pertains to the assessment year 2015-16. Therefore, the petitioner is deemed to have been assessed on 31.10.2016. Before the expiry of the said period, action could not have been initiated under Section 22(4) of TNVAT Act. That apart, the turnover of the petitioner was more than rupees forty crores. The due date for filing Form WW report was 31.12.2016 and by the said date, the petitioner had already filed the said report. Without taking into account the Form WW report, action could not have been initiated by the assessing authority.

5.On these twin grounds namely taking action before the cutoff date ie., 31.10.2016 and not having waited till the filing of Form WW report, the order impugned in the writ petition is quashed. The matter is remitted to the file of the first respondent to pass orders afresh in accordance with law. I make it clear that this writ petition was filed on 27.12.2016. It has been disposed of today ie., 02.03.2021. The period from 27.12.2016 to 02.03.2021 will be excluded for the purpose of computing the limitation. The attachment of the petitioner's account lying with the second respondent bank was pursuant to the order passed by the first respondent. Since the order passed by the first respondent itself has been set aside, the attachment also stands raised. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

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,
Tiruchirappalli.

+1 CC to MR.C.MUTHU SARAVANAN, Advocate (SR-8244[F] dated 02/03/2021)

+1 CC to MR.D.VIJAYAKUMAR, Advocate (SR-8303[F] dated 02/03/2021)

+1 CC to SPL GP (SR-8403[F] dated 03/03/2021)

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