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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.25205 of 2019
and
WMP(MD)No.21786 of 2019

M/s.Shri Lakshmi Dhall Mill,
Rep.by Partner S.Somasundaram ... Petitioner

Vs.

The Assistant Commissioner (ST),
Theni I Assessment Circle,
Theni. ... Respondent

Prayer: Writ petition is sfiled under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33675121129/2014-15 dated 31.10.2019 issued by the respondent and quash the same as illegal and arbitrary and direct the respondent to pass assessment order after verifying the records of the petitioner in accordance with law by considering the petition dated 12.11.2019 filed by the petitioner under section 84 of the TNVAT Act including the opportunity of being heard.

For Petitioner : Mr.R.Karunakar

For Respondent : Mr.G.Arjunan,
Government Advocate

ORDER

Even before commencing the arguments, the learned counsel appearing for the petitioner submitted that the petitioner would remit a sum of Rs.1.00 lakh to the respondent on or before 31.03.2021. This remittance will be made without prejudice to the petitioner's contention. The petitioner will abide by the orders that will be passed by the respondent if this Court remands the matter.

2.Heard the learned counsel on either side.

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3.The assessing officer appeared through video conference and assisted the court. The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2014-15. The petitioner has been dealing in pulses, grams and wheat. The petitioner's assessment was finalized on deemed assessment basis under Section 22 of the TNVAT Act, 2006. Following the inspection of the petitioner's premises by the Enforcement Wing Officials on 31.12.2014, subsequent proposed pre-revision notice was also issued. The petitioner offered his objections. That was followed by personal hearing also. Thereafter, the impugned order dated 31.10.2019 came to be passed. Questioning the same, this writ petition came to be filed.

4.The respondents has filed a detailed counter affidavit. The learned Government Advocate for the respondents reiterated all the contents set out therein.

5.The impugned order is vulnerable on two counts, a) the respondent has alleged stock variation. Even though the petitioner has denied the said allegation, without going into the said aspect, the impugned order has been passed, b)the petitioner is engaged in import purchase, inter-state purchase, local purchase, consignment sales. Exempted goods are also involved. Even though the petitioner is having records covering all the transactions, the respondent has chosen to levy purchase tax on estimating the proportionate local purchase liable for tax.

6.I am of the view that there was no need or necessity for resorting to such guess work or estimation when the petitioner was having all the relevant records. Only because separate accounts were not maintained on local purchase, the respondent need not have resorted to guess work. The respondent could have directed the assessee to segregate the transactions and to file separate memo containing the transactions of local purchases. If the respondent had given such direction and if the petitioner had not complied with the same, then the respondent could have resorted to estimation and guess work. Merely because separate accounts were not maintained, the respondent could not have passed the impugned order.

7.On this sole ground, the impugned order is quashed and the matter is remitted to the file of the respondent to pass orders afresh in accordance with law. This writ petition is allowed. This order will come into effect only if the petitioner adheres to the undertaking given earlier. If the petitioner does not remit the sum of Rs.1.00 lakh to the respondent on or before 31.03.2021, this order will be of no consequence and the writ petition would stand dismissed in such an event. No costs.

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Consequently, connected miscellaneous petitions are closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SKM

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 (ST),

Theni I Assessment Circle,

Theni.

W.P.(MD)No.25205 of 2019
and
WMP(MD)No.21786 of 2019

15.03.2021

AMS(26.04.2021) 3P 2C