BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.10424 of 2017
and
W.M.P.(MD)No.7969 of 2017

Tvl.G.M.Life Style,
Represented by its Proprietor,
G.Sivakumar, aged about 43 years,
S/o.Gopal,
No.272, Good Shed Street,
Madurai-625 001.
... 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 Assistant Commissioner (CT),
Nethaji Road 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 pertaining to the impugned proceedings of the second respondent in TIN: 33564982625/2015-16, dated 24.03.2017 and quash the same.

For Petitioner : Mr.B.Rooban
for Mr.R.Veeramanikandan
For Respondents : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned side on either side.

2.Even before commencing the arguments, the petitioner's counsel, on instructions, states that he will remit a sum of Rs.1,00,000/- to the second respondent towards disputed tax demand. 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 post remand.

This undertaking given by the petitioner through his counsel is recorded.

3.The case on hand pertains to the assessment years 2015-16. The petitioner's assessment for the said year was finalised on deemed assessment basis under Section 22(2) of TNVAT Act, 2006. The petitioner's place of business was inspected by the Enforcement Wing Officials on 19.08.2015. Stock difference was noticed. Based on the inspection proposal, the second respondent issued pre-revision notice dated 08.03.2017. The petitioner offered their reply. Thereafter, personal hearing was granted. Rejecting the stand of the petitioner, the proposals set out in the show cause notice was confirmed and the impugned order was passed levying tax and penalty on the petitioner. Questioning the same, the writ petition has been filed.

4.The second respondent has filed a detailed counter affidavit and the learned Government Advocate took me through its contents. The learned Government Advocate would call upon this Court to dismiss this writ petition as not maintainable because the petitioner has failed to avail the alternative remedy of appeal.

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

6.A mere look at the impugned order would indicate that stock difference was arrived at on the basis of the trading account method. It is true that the petitioner has not maintained the stock register. As rightly pointed out by the learned counsel for the petitioner, the issue on hand is *no longer res integra*. It is covered by the order dated 11.10.2012 made in Tax Case(Revision)(MD) No.100 of 2012 (*State of Tamil Nadu represented by the Deputy Commissioner(CT), Madurai Division Vs. Tvl.Jalaram Timber Depot*). The Hon'ble Division Bench in the said decision held that even though the assessee may not have maintained the stock register, the authorities cannot resort to any formula method. It was specifically noted that arriving at stock variation by adopting formulae method in terms of money value is not a scientific method.

7.Respectfully following the said decision, the order impugned in the writ petition is quashed. The Writ Petition is allowed. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. As per Rule 6 of TNVAT Rules, the assessee is bound to maintain the accounts. The petitioner appears to be having the relevant account books. Therefore, if a proper exercise is undertaken, stock in physical terms can be easily arrived at. In fact, the assessing officer can call upon the assessee to undertake an exercise in this regard and come out with a statement on oath. Thereafter, its correctness can be verified by the assessing officer. The assessing officer is directed not to follow any formulae method but to arrive at stock difference in physical terms. I have given this direction as regards arriving at stock difference on the premise that inspection was made and the inspecting authorities had taken inventory of the physical stock available at the time of inspection. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// 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.

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To

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+1 CC to M/s.B.ROOBAN, Advocate (SR-11700[F] dated 17/03/2021)

+1 CC to M/s.SPL GP (SR-11958[F] dated 17/03/2021)

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GS (28.04.2021) 3P 5C