IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7539 of 2022 and
W.M.P.Nos.7540 & 7541 of 2022

M/s.S.M.Electricals,
Rep. By its Proprietor – M.Thiagarajan,
No.15, Bus Stand,
Thalaivasal, Attur – 636 112,
Salem District. ... Petitioner

Vs

The State Tax Officer,
Attur Town Assessment Circle,
Attur, Salem District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records on the file of the respondent in its proceedings made in TNVAT: 33083262109/ 2016-17 dated 09.08.2021 and the consequential order in TIN: 33083262109/2016-17 dated 11.03.2022 quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of the respondent in its proceedings made in TNVAT: 33083262109/ 2016-17 dated 09.08.2021 and the consequential order in TIN: 33083262109/2016-17 dated 11.03.2022 quash the same.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act').

3. Insofar as the assessment year 2016-17 is concerned, the petitioner filed returns which was accepted and deemed to have been assessed under Section 22(2) of the Act.

4. However, subsequently, based on the information furnished by the petitioner dealer in the Form WW, the Profit and Loss Account Statement have been examined and out of which, according to the Revenue, there was a sales turnover to be reported to the extent of Rs.25,58,714/-. Therefore, they wanted to reopen and review the assessment already deemed to have been accepted under Section 22(2) by invoking Section 27(1)(a) of the Act, accordingly, a show cause notice was issued which has been replied by the petitioner. Having considered the reply, the Assessment Officer has passed an order of assessment under Section 27(1)(a) of the Act on 09.09.2021.

5. In this regard, it is the case of the petitioner, as projected by the learned counsel appearing for the petitioner Mrs.R.Hemalatha that, insofar as the profit that claimed to have been gained by the petitioner dealer during the relevant period was 21% and more, however comparing the same, the Assessment Officer has concluded that, in similar case dealt with by another dealer during the same period, he only claimed 3% of the profit or margin, therefore, the present margin claimed by the petitioner dealer to the extent of 21% may not be correct. Further, insofar as the purchase of the stock is concerned, not the entire stock purchased by the petitioner had been sold, therefore, it has not been reflected in the sales and those goods which were purchased had been kept in the store of the petitioner and in this regard, whatever the documents and further input are required that the petitioner was ready and willing to make it and this has been clarified by the letter dated 01.11.2021 and accordingly, they filed a petition under Section 84 of the TNVAT Act for rectification and the said rectification application also now has been rejected through the impugned order dated 11.03.2022. Therefore, challenging the assessment order dated 09.08.2021 and the rejection of rectification application dated 11.03.2022, the present writ petition has been filed.

6. Heard Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent, who would submit that, if at all it is the claim of the petitioner that, some of the stocks having not been sold or utilised, therefore, it does not reflect in the Sales Register and the stocks are available and in this regard, documents were available, it is very well open to them to file it, but they have not filed any

such documents. Therefore, the Assessing Authority had no other option except to proceed on the basis of the available documents and hence, the learned Additional Government Pleader would contend that, the orders impugned i.e., both the assessment order as well as the rejection of rectification are sustainable and therefore, those orders do not require any interference from this Court.

7. I have considered the said rival submissions made by the learned counsel appearing for both sides.

8. Insofar as the claim made by the petitioner with regard to the margin of 21% is concerned, it cannot be compared with any other dealer of the similar goods and therefore, in my considered view that reason may not hold good.

9. However, it is the claim made by the petitioner that, some of the stocks though purchased having not been reflected in the sale because that has not been utilised and sold and it had been kept in the stores, for which, documents are available with the petitioner, hence one more opportunity can be given to the petitioner to produce the same, as that willingness have already been expressed by the petitioner even before the Section 84 rectification application. Therefore, on that ground, the rectification application could have been decided after giving such an opportunity to the petitioner to produce additional documents to substantiate their contention.

10. Since such an opportunity had not been given, I am of the view that, the impugned orders can be set aside and the matter can be remanded back for reconsideration. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned orders are set aside and the matters are remanded back to the respondent for reconsideration.

(ii) While reconsidering the same, one more opportunity shall be given to the petitioner by giving a date. On or before the said date, the petitioner shall produce the necessary documents to substantiate their contention that, all the stocks purchased during the relevant year having not been utilised or sold, all those goods were kept as stock, for which, the necessary documents available with the petitioner shall be produced to the satisfaction of the Assessing Authority. On receipt of those documents, it is open to the Assessing Authority to verify the same and pass final orders thereon in the assessment proceedings initiated under Section 27 of the Act, thereafter.

11. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

The State Tax Officer,
Attur Town Assessment Circle,
Attur, Salem District.

+1cc to Mr.Hemalatha, Advocate SR.No.22543
+1cc to the Special Government Pleader(Taxes) SR.No.21888

W.P. No.7539 of 2022

RSI(CO)
GN(08/06/2022)