IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.7937 OF 2021
AND
W.M.P.NOS.8485 & 8487 OF 2021

[Video Conferencing]

M/s.S.M.Wood Industries,
Rep by its Proprietor – S.Mani,
No.321, A.K.Palaniappa Street,
Thavittupalayam,
Anthiyur – 638 501,
Erode District.

...Petitioner

-Vs.-

The Assistant Commissioner [ST],
Bhavani Assessment Circle,
No.158/1002, Pookkadai Veethi,
Bhavani – 638 301,
Erode District.

...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the Respondent in its impugned proceedings made in TIN 33702944578/2012-13 dated 22.01.2021 and consequential order dated 05.03.2021 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.Richardson Wilson,
AGP (Taxes)

ORDER

The petitioner has challenged the impugned order dated 05.03.2021 passed by the respondent under Section 27 of the TNVAT Act, 2006 on the ground that the entire proceedings initiated pursuant to notice dated 06.10.2020 purportedly under Sections 27 and 22 of the TNVAT Act, 2006 was time barred.

2.The learned counsel for the petitioner submits that the dispute pertains to the Assessment Year 2012-13 and in view of the deemed assessment in terms of sub-clause 2 to Section 22 of the TNVAT Act, 2006 there was deemed Assessment on 31.10.2013 and therefore, for invoking Section 27 of the TNVAT Act, 2006 the last date for issuing the notice expired on 31.10.2019, whereas the notice was issued for the first time only on 06.10.2020 which was clearly beyond the period of limitation prescribed under the aforesaid provisions. It is therefore submitted that the respondent ought not to have initiated the demand, even though the petitioner had not replied to the notice.

3.The learned counsel for the petitioner further submits that an attempt was made by the petitioner for revising the order by filing an application under Section 54 of the TNVAT Act, 2006 before the Joint Commissioner on 05.02.2021. The Joint Commissioner however rejected the revision petition by communication/order dated 11.02.2021 by directing the petitioner to work out the remedy by filing an appeal against the assessment order dated 22.01.2021. Since there was error apparent on the face of the record, the petitioner has to approach the respondent under Section 84 of the Act which has been however rejected by the respondent stating the petitioner to file an appeal. It is therefore submitted that the respondent ought to have considered the fact that the invocation of proceedings under the TNVAT Act, 2006 for the assessment year 2012-13 vide notice dated 06.10.2020 was time barred and therefore, the assessment order dated 22.01.2021 passed by the respondent was without jurisdiction.

4.The learned counsel for the petitioner submits that in any event the respondent ought to have passed appropriate orders on merits in respect of the petition filed under Section 84 of the TNVAT Act, 2006 on 17.02.2021.

5.Opposing the prayer, the learned Additional Government Pleader appearing on behalf of the respondent submits that the petitioner has an alternate remedy against the assessment order dated 22.01.2021. Therefore, it is submitted that the petitioner should be directed to work out his remedy by filing a suitable appeal.

6.Considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondent.

7.It is noticed that the petition filed under Section 84 of the TNVAT Act, 2006 on 17.02.2021 has been rejected summarily by stating that the petitioner ought to have filed a reply to the notice dated 06.10.2020 and that the petitioner in any event had to file an appeal. The impugned order does not discuss as to why on merits the application filed under Section 84 of the TNVAT Act, 2006 should not be rejected.

8.Considering the same, this Court is inclined to set aside the impugned order and the matter is remitted back to the respondent to pass appropriate orders on merits within a period of thirty days from the date of receipt of a copy of this order. The petitioner is given liberty to appear before the respondent in person or through Video Conferencing, subject to such Government protocols as may be in place, owing to outbreak of third wave of Pandemic. The petitioner is also given liberty to file a detailed reply/representation considering all the notices and orders which came to be passed.

9.The Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

pgp

To

The Assistant Commissioner [ST],
Bhavani Assessment Circle,
No.158/1002, Pookkadai Veethi,
Bhavani - 638 301, Erode District.

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.3185

+1cc to the Special Government Pleader(Taxes), S.R.No.3627

W.P.No.7937 of 2021

SVI(CO)
RLP(10/02/2022)