IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.A. No. 241 of 2019

&

C.M.P. No. 2590 of 2019

The Assistant Commissioner (ST),
Pondy Bazaar Assessment Circle,
Chennai. ..Appellant

Vs.

M/s. Bhaggyam Constructions,
rep. by its Proprietor,
No.2, Sarangabani Street,
T. Nagar, Chennai – 600 017. ..Respondent

Prayer: Writ Appeal as against the order dated 02.08.2018 passed in W.P. No. 7230 of 2018.

For Appellant :: Mr.V. Prashanth Kiran
Govt. Advocate (Taxes)

J U D G M E N T

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

The respondent/writ petitioner has filed W.P. No. 7230/2018 wherein the respondent had challenged the notice dated 09.03.2018. In the said notice, it was stated that the respondent/writ petitioner had not fulfilled the conditions specified under Section 6(1) of Tamil Nadu Value Added Tax Act,2006 ('TNVAT Act' for brevity), the payment of tax at compounded rates under Section 6 of the Act is not in order and hence, the appellant proposed levy of tax under Section 5 of the Act quantifying the proposed demand and invited objections from the respondent herein/ writ petitioner along with supporting documents.

2. Before the Writ Court, the main challenge to the proceedings dated 09.03.2018 was on the ground that in the assessee's own case, a similar notice was issued by the appellant for the assessment year 2008-09,

which was contested by the assessee. However, the Assessing Officer confirmed the proposal and levied the tax under Section 5 of TNVAT Act . Aggrieved by the same, an appeal was preferred before the Appellate Deputy Commissioner (CT), Chennai, which was allowed by order dated 18.05.2015. Though the Revenue preferred further appeal before the Tamil Nadu Sales Tax Appellate Tribunal as against the order dated 18.05.2015, there was no interim order statying the proceedings of the Appellate Deputy Commissioner. Since the writ petitioner had the benefit of similar orders for two other assessment years, namely, 2007-2008 and 2009-2010 and that all the three appeals were allowed by the Appellate Authority by order dated 18.05.2015, it was contended that the notice dated 09.03.2018 was invalid and the same has got to be interfered with.

3. Learned Single Judge while taking note of the contentions of the parties disposed of the writ petition by directing the appellant herein to keep the impugned notice under abeyance and await the decision in the appeal filed by the writ petitioner/respondent herein against the order passed by the Appellate Deputy Commissioner in A.P. No. 174 to 176 of

2015 VAT dated 18.05.2018 and that it is open to the Revenue to revive the impugned notice in case they succeed before the Tribunal.

4. Learned counsel for the appellant/Revenue would submit that a similar issue came up before a Division Bench of this Court in W.P. Nos. 29096 of 2007 etc batch and this Court has disposed of the writ petitions on 31.03.2022, wherein, the relevant paragraph reads thus:

5. After hearing the appellant, we are of the view that since a similar issue has been decided by a Division Bench , we are not inclined to differ from the said view as no prejudice is going to be caused to the appellant herein. Depending upon the outcome of the orders in Appeal Nos. 174 to 176 of 2015, which are pending before the Appellate Deputy Commissioner, it is open to the department to proceed in accordance with law and any observation touching upon the merits of the matter will have no bearing while a decision is being taken by the authorities concerned, based on facts of each case.

6. The writ appeal is disposed of accordingly. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (C.S.N.J.)
05.09.2022

nv

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

nv

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