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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.03.2022
CORAM

**THE HONOURABLE MR. JUSTICE C.SARAVANAN**

Writ Petition (MD) No.2586 of 2020
and
W.M.P.(MD)No.2228 of 2020

S.Moorthy,
Contractor,
S/o.Subramani,
Sivagangai District - 630 405. .. Petitioner

Versus

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),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai - 630 561. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the second respondent in TIN: 33615401298/2012-13, dated 19.05.2017 and quash the same.

For Petitioner : Mr.B.Roopan

For Respondents : Mr.K.S.Selva Ganesan
Additional Government Pleader

**ORDER**

The petitioner has challenged the impugned order dated 19.05.2017, passed by the second respondent for the assessment year 2012-2013.

2.It is the specific case of the petitioner that the petitioner is a Government Contractor rendering works contract. On account of finalization of the assessment, the petitioner was given refund of the amount paid in excess by the recipient namely, the Government. Though according to the petitioner, he was entitled for higher amount of refund, the second respondent issued a refund notice

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seeking to deny a part of the refund claim. Under these circumstances, the refund order dated 04.12.2013, was passed, whereby, it was held by the second respondent that the petitioner was entitled for refund of Rs.30,106/- towards refund of excess tax deducted and paid. It is submitted that long after, the above said revision order was issued on 04.12.2013, wherein the second respondent has decided to re-open the issue by issuing notices for re-fixing the assessment and to deny and recover the refund of the amount paid to the petitioner and further demanded tax from the petitioner.

3.The learned counsel for the petitioner submits that the impugned order is on account of change of opinion and therefore, in the light of the well settled principles of law, the avenue to re-open the assessment is not available under Section 27 of the TNVAT Act, 2006. That apart, the learned counsel for the petitioner submits that the imposition of penalty under Section 27(3) of the TNVAT Act, is also contrary to law. In support of the above submissions, the learned counsel for the petitioner relied on the decisions of this Court in the cases of the **Deputy Commissioner (CT), Coimbatore, vs. V.S.R. Ramaswami Chettiar and Bros.** reported in **1976 (38) STC 382 (Mad)** and **Rainbow Foundations Ltd., Vs. Assistant Commissioner (CT) (FAC), Chennai** reported in **2011 (37) VST 592 (Mad)**, which were followed by a learned Single Judge of this Court in the case of **M.Ravichandran vs. The Commissioner of Commercial Taxes, Chennai and another [W.P.(MD)Nos.16874 to 16878, 16889 & 16890 of 2018, dated 20.12.2018].**

4.It is submitted that though these decisions have been rendered in the context of Section 12(1)(16) of the TNGST Act they are *pari materia* to Sections 22 and 27 of the TNVAT Act, and therefore, imposition of penalty under Section 27(3), is also without jurisdiction.

5.Opposing the prayer, the learned Additional Government Pleader for the respondents submits that the petitioner has failed to respond to the notices, which were issued before passing the impugned order. It is submitted that the petitioner has also not given any documents to substantiate the case and therefore, it is not open for the petitioner to come to this Court by way this Writ Petition by stating that the revision proceedings were inspired by change of opinion by the incumbent Officer.

6.By way of rejoinder, the learned counsel for the petitioner submits that the impugned order has been passed without issuing pre-revision notice to the petitioner and therefore, submits that the order passed is liable to be quashed.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government

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Pleader for the respondents.

8.*Prima facie*, it appears that the impugned proceedings seeking to re-open the assessment and confirmation of the demand therein is on account of change of opinion. Earlier, the petitioner appears to have filed a refund claim, which culminated in the revision assessment order dated 04.12.2013. While granting refund, the authorities under the Act would have called for all the records and scruntized the same before allowing refund of the amount of tax paid on behalf of the petitioner by its recipient.

9.I find merit in the submissions of the learned counsel for the petitioner. Since the order appears to have been passed without calling the petitioner for personal hearing or giving a proper notice for revising the assessment completed earlier on 04.12.2013, I am inclined to quash the impugned order and remit the case back to the second respondent to pass a fresh order. The impugned order, which stands quashed by this order, is to be treated as a notice. The petitioner is therefore directed to file a reply to the said notice within a period of 30 days from the date of receipt of a copy of this order. Thereafter, the second respondent shall pass appropriate orders after hearing the petitioner within a period of 15 days from the date of receipt of the reply.

10.This Writ Petition is disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Commercial Taxes,
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