BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.9137 of 2022
and
WMP(MD) No.6538 of 2022

M/s. New Popular Stores,
Rep. by its Proprietor M.Amirudeen Ahmed,
9/35, 1st Street, Bharathiyarpuram,
Koothaipar, Trichy 620 014. .. Petitioner

Vs

The State Tax Officer,
Tiruvermbur Assessment Circle,
Trichy. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent in 33663563945/2015-16 dated 11.01.2022 and quash the same illegal, arbitrary and against the proviso section 3(4) of the TNVAT 2006.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.P.Subburaj
Special Government Pleader

ORDER

The petitioner is the proprietor of New Popular AutoStores, dealer in automobile spare parts and was an assessee on the file of the State Tax Officer, Tiruverumbur Assessment Circle, Trichy. He was found not eligible to avail compounding scheme under Section 3(4)(a) compounding scheme of TNVAT 2006 and hence, demanded the re-assessment of Rs.6,41,757/- which was issued against him on 11.01.2022. The petitioner received the same on 20.01.2022 and on perusal of the same, he found that the petitioner effected inter-state purchase of oil seal as sample alone cannot be a reason for rejection of the option for assessment under compounding scheme under section 3(4) of TNVAT Act. Further, it does not restrict the inter-state purchase, but only state that a dealer who effects 2nd and subsequent sale of goods should purchase within the State and his taxable turnover should be less than Rs.50 lakhs. The petitioner is regularly filing monthly Form "K" returns and paying compounded tax @0.5%. The petitioner has not collected any tax on the sales effected from the customers nor claimed any input tax credit on his purchases. Just because the petitioner has purchased the sample from other State dealer, it cannot be the reason for rejecting his option to assess under Section 3(4) of the TNVAT Act and assess the taxable turn over reported at higher rate of 14.5% . Further, in the absence of any escapement of turn over or incorrect/incomplete return, the question of levy of penalty under Section 27(3) of the TNVAT Act does not arise. He further submitted that the Hon'ble Apex Court in the case of ***Columbia and Sportswear company vs. Director of Income Tax, Bangalore*** reported in ***2012(283)ELT 321(SC)*** had held that Article 226 is a Constitutional provision and therefore, it could not be affected by any provision made in the statute by the Legislature and it could not be the reason to exclude the jurisdiction of the High Court to entertain this petition and hence, the petitioner has filed this present writ petition.

2. The learned counsel for the Department would submit that the petitioner admits that he had purchased the samples from other State. Once the person purchased articles within the State, they are liable under the compounding scheme. The petitioner was issued notice on

08.09.2020 informing that the inter-state purchase of goods would not attract 0.5% which is not contrary to the provisions under Section 4 (a) of TNVAT Act. The objections raised by the petitioner were considered and thereafter, the impugned order was passed. Further, in the impugned order, the petitioner was called upon to pay balance tax amount within 30 days from the date of notice. The petitioner having received the notice on 20.01.2022 ought to have paid the tax demanded and if aggrieved he ought to have filed a statutory appeal before the authorities and not before this Court in the absence of violation of principles of natural justice.

3. It is seen that the petitioner has suffered an order from the respondent and this order is appealable order. The petitioner ought to have filed an appeal before the appellate authorities and alternate remedy is also available to the petitioner. More so, in the fiscal matter, this Court shall not entertain this petition as a matter of course.

4. In view of the same, this writ petition stands dismissed. However, liberty is granted to the petitioner to approach the concerned

authorities for appropriate relief. Further, it is seen that by approaching this Court, the petitioner had not filed statutory appeal and hence, the limitation period got lapsed. The petitioner's apprehension is that appeal would not be entertained and his apprehension is reasonable.

5. Accordingly, the petitioner is directed to file an appeal before the appellate authorities within a period of three weeks from the date of receipt of the order and if the said appeal is filed within the time stipulated by this Court, the appellate authorities are directed to entertain the same and pass orders on merits and in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

17.06.2022

Index: Yes/No
Internet : Yes/No
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To

The State Tax Officer
Tiruvermbur Assessment Circle
Trichy

M.NIRMAL KUMAR, J.

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