BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.8030 of 2014
and
M.P(MD).No. 1 of 2014

M/s Kannabiran Motors
Rep.by its Proprietor,
V.Gopalakrishnan ... Petitioner

Vs.

The Commercial Tax Officer,
Government of Tamil Nadu,
Devakottai,
Sivagangai District. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings of the respondent herein bearing TIN 33915461176/2012-13 dated 10.03.2014 and 03.04.2014 and quash the same.

For Petitioner : Mr.S.karunakar
For M/s.A.L.Ganthimathi

For Respondent : Mr.S.Shaji Bino
Special Government Pleader

ORDER

The petitioner has challenged the impugned order, dated 10.03.2014, passed by the respondent determining the tax due from the petitioner for Rs.38,82,335/- by an order, dated 10.03.2014, under Section 20 (3) of the TNVAT Act.

2. The learned counsel for the petitioner submits that the respondent has issued another notice during the pendency of the writ petition, all dated 22.03.2021, for the subject assessment year 2012-2013 and also for assessment years 2009-2010, 2010-2011 and 2011-2012 and therefore petitioner is willing to appear before the respondents and convince the respondents that all the transactions were bonafidee and purchases were from a dealer.

3. A perusal of the notice issued to the petitioner on 22.03.2021, during the pendency of the writ petition, appears to indicate that the petitioner was not eligible for input tax creditor of Rs.56,78,869. In other words, if the demand pursuant to the notice dated 22.03.2021 is confirmed, the petitioner would be liable to pay a sum of Rs.38,82,987+Rs.56,78,869. The issue has to whether the petitioner has correctly claimed input tax credit or not and whether the petitioner was required reverse the aforesaid amount of Rs.56,78,869 is to be adjudicated separately. The principal issue has to whether suppression of sales turn over by the petitioner is to be decided by the Appellate Commissioner by examining the correctness or otherwise the claim of the petitioner on merits.

4. The petitioner has not brought out any valid ground for interfere under Article 226 of the Constitution of India. The petitioner has an alternate remedy before the Appellate Commissioner and therefore petitioner has to workout the aforesaid remedy before the Appellate Commissioner.

5. Therefore, the writ petition is not maintainable. The liberty is however given to the petitioner to file appropriate application by way of an appeal or by the revision petition before such authority. In case, the petitioner files an appeal against the impugned order, such appeal shall be filed within a period of thirty days from the date of receipt of copy of this order, subject to mandatory pre-deposit of 25% or in the alternative appropriate application for the revision of the order before the Jurisdictional Officer within such period in view of notice dated 22.03.2021. In case, the petitioner files an appropriate application for the revision of the order in view of the notice dated 22.03.2021, same shall be decided by the concerned officer before passing appropriate orders on merits. With the above observations, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Commercial Tax Officer,
Government of Tamil Nadu,
Devakottai,
Sivagangai District.

+1 CC to M/s.SPL GP (SR-6828[F] dated 17/02/2022)

W.P(MD).No.8030 of 2014
17.02.2022

RD(21.03.2022) 3P 3C