IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2223 and 2228 of 2021
and
WMP.Nos.2520 and 2523 of 2021

M/s.Friends Aauto Gas,
represented by its Partner,
No.499, Naiker Mahal (Bus Stop),
K.Chettipalayam, Dharapuram Road,
Tiruppur-641 608. ... Petitioner
(in both WPs)

Vs.

The State Tax Officer,
Pongalur Assessment Circle,
Tiruppur. ... Respondent
(in both WPs)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in TIN 33512392413/2009-10 and TIN 33512392413/2010-11 respectively, quash the assessment order dated 20.11.2020 .

W.P.Nos.2223 and 2228 of 2021

For Petitioner : Mr.C.Subramanian

For Respondents : Ms.Amira Poonkodi Dinakaran
Government Advocate

COMMON ORDER

This is the second round of litigation before this High Court. The petitioner is a Dealer in liquified Petroleum Gas for Autos and had obtained registration under provision of Tamil Nadu Value Added Act, 2006 on 18.06.2008. Subsequently, the petitioner's registration number was cancelled on 20.07.2010. Thereafter, a fresh registration was applied and issued to the petitioner vide Tin Number : 33512392413. The petitioner had not filed returns for the assessment year 2009-2010. However, had filed returns for the assessment year 2010-2011.

2. The petitioner was thus issued with the notices dated 29.02.2014 seeking to demand tax for the respective assessment years. It appears that the petitioner had sought for time for about 30 days, to reply to the notices. The Assessing Officer however had granted only 15 days time and thereafter proceeded to pass two assessment on 07.07.2015.

3. According to the petitioner at the time of inspection, the respondent had also collected a sum of Rs.13,27,000/- and Rs.5,04,000/-. The orders that was passed by the Assessing Officer on 07.07.2015, were challenged in

writ petitions in WP.No.16475 and 16476 of 2016. By an order dated 29.04.2016, these writ petitions were allowed by way of remand. These orders dated 07.07.2015 were set aside.

4. Pursuant to the remand, the petitioner has sent representations/replies to the notice dated 29.02.2015. In these replies for the respective assessment year, the petitioner has specifically requested the respondent to furnish the details of purchase orders, based on which, the notices dated 29.02.2015 were issued. The details of these purchase have been furnished to the petitioner only for the first time in the impugned order. A sum of Rs.5,04,000/- that was paid at the time of inspection alone has been appropriated towards the tax liability of the petitioner for the assessment year 2010-2011. Thus the balance tax has been demanded from the petitioner is follows:

		Rs.
Tax due	" "	8,81,812-
Input Tax Credit adjusted (ITC claimed is Rs.NIL	" "	0
Tax paid	" "	5.04.343-
Balance tax due	" "	3,77,469-

5. The respondents have arrived at the sales turn over by adding 5% as gross profit on the purchase value for the assessment year 2010-2011 and have made further equal addition for probable omission to arrive at the suppressed turn over as below:

Description		***Turnover***	***Rate of Tax***	***Tax Due***
		Rs.	.	Rs.
Sales turnover (Sales Suppressions arrived)	" "	35,27,250-	12.50%	4,40,906/-
ADD Equal addition for	" "	35,27,250-	12.50%	4,40,906/-
Total Sales turnover arrived (Total sales suppression arrived)	" "	70,54,500-		8,81,812/-

6. The, impugned orders also imposes penalty under Sections 20c, 27(3)(c) of the TNVAT Act 2006. There is no whisper about the amount of Rs.13,27,000/- that was collected at the time of inspection on 19.02.2014 and 21.02.2014.

7. As far as the assessment year 2009-2010 is concerned, the petitioner had not filed any returns. Here, also there is no adjustment of the aforesaid amount of Rs.13,27,000/- that was collected from the petitioner at the time of

inspection. The impugned assessment order proceeds on the same line by adding 5% to the purchase value as the gross profit and thereafter on the same, an equal addition for probable omission has been made as detailed below

Description		***Turnover***	***Rate of Tax***	***Tax Due***
		Rs.	.	Rs.
Sales turnover (Sales Suppressions arrived)	" "	86,27,375	12.50%	10,78,422
ADD Equal addition for	" "	86,27,375	12.50%	10,78.422
Total Sales turnover arrived (Total sales suppression arrived)	" "	1,72,54,750		21,56,844

On the aforesaid amount, the tax has been demanded as Penalty under Section 27(3) (c) of the TNVAT Act 2006, 160% has been imposed.

8. The impugned Order which has been passed is detailed. However, there is a manifest valuation of Principles of Natural Justice as details of purchase order which were relied upon in the notices dated 29.02.2015 has been detailed for the first time in the impugned order for the respective assessment years on 20 11 2020. There is also no whisper regarding the appropriation of the amount of Rs.13,27,000/-. All though in the counter the

respondent has explained that the aforesaid sum has been appropriated towards the tax liability of the petitioner in TIN No:3362339073. These aspects ought to have been discussed in the impugned order.

9. Considering the over all facts and circumstances of the case, Court is inclined to quash the impugned orders and remits the cases back to the respondent to pass fresh orders on merits in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The petitioner shall however deposit a sum of Rs.5,00,000/- as a security as dispute pertains to the assessment year 2009-2010 2010-2011 within a period of two weeks from the date of receipt of a copy of this order.

10. Subject to such a compliance, the respondent shall proceed to pass appropriate orders on merits in accordance with law within a period of eight weeks. The respondent also furnish details called for by the petitioner in their reply dated 19.05.2016 before passing order.

11. It is made clear, in case, if the petitioners fails to comply with the requirements of this order, this order shall stand revoked sine die. The

respondent shall proceed to recover the amount that has been confirmed in the impugned order without any further reference of this Court.

12. These Writ Petitions stand allowed with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

02.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

Vv

To

The State Tax Officer,
Pongalur Assessment Circle,
Tiruppur.

C.SARAVANAN, J.

Vv

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