IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

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

W.P.No.6269 of 2020
and
W.M.P.No.7386 of 2020

S.Manivannan ... Petitioner

Vs

The State Tax Officer,
Arisipalayam Assessment Circle,
Salem ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in TIN:33222842313/15-16 dated 28.01.2020 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such further writ, order or direction.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has challenged the Impugned Assessment Order dated 28.01.2020 for the Assessment Year 2015-2016. The Impugned Order preceded a notice to which the petitioner has also replied.

2. The specific case of the petitioner is that the petitioner is merely a commission agent and not a dealer and therefore the demand has been wrongly confirmed on the petitioner vide Impugned Order.

3. The respondent have considered the objections of the petitioner and has held as under:-

> *"In response to the above notices, the dealers filed their reply letters dated:16.03.2018 and 07.06.2019 without any documentary proof. Again a notice dated: 29.10.2019 was reversed* on 07.11.2019 to the dealers to file their documentary proof. On receipt of the above notices, the dealers have filed their reply dated:28.11.2019 along with a copy of the Trading Account and statement furnishing details of purchase effected during the year 2015-2016 without any documentary evidence to prove for the claim of ITC*
> *(* Served)*

Hence Order passed u/s. 22(4) of the TNVAT Act, 2006 as per the proposals made in the notice as below:-

Taxable turnover reported in the returns	:Rs.3,31,46,515.00/-
Add: 1% for defects	:Rs. 3,31,465.00/-
Add: Discount Received proposed as taxable to vide defect 3 in the notice	:Rs. 14,89,535.00/-
Total & taxable to proposed @ 14.5%	:Rs.3,49,67,510.00/-
Tax due @ 14.5%	:Rs.50,70,288.00/-
ITC adjusted already	:Rs.48,06,245.00/-
Balance due	:Rs. 2,64,043.00/-
Reversal of ITC	Rs.1,15,552.00/-
Total Tax due	Rs.3,79,595.00/-
Tax paid	Rs.-Nil-
Balance	Rs.3,79,595.00/-

A demand notice in Form-O is issued.

<u>Penalty u/s. 22(5) levied @ 150%</u>

Penalty levied @ 150%	:Rs.5,69,392.00/-
Penalty paid	:Rs. - Nil-
Balance	:Rs.5,69,392.00/-

A demand notice in Form-RR is issued.

4. It is noticed that the petitioner was involved in the trading of cement manufactured by Tamil Nadu Cements Corporation Limited (TANCEM) and had claimed ITC on the same and had also passed a same to its customers who are apparently Government Contractors.

5. If it is a case of the petitioner that the petitioner is merely a Commission Agent, question of petitioner raising sale invoice and claiming ITC cannot be countenanced.

6. *Prima facie*, it appears that the petitioner has raised purchase orders on Tamil Nadu Cements Corporation Limited (TANCEM) who in return has raised invoices on the petitioner pursuant to which the petitioner has raised invoice on the customers. It appears supplies were directly made to buyers.

7. Therefore, the argument of the petitioner that petitioner is merely a Commission Agent cannot be countenanced.

8. The petitioner has an alternate remedy to challenge the Impugned Order before the Appellate Authority. The petitioner shall therefore file such an appeal before the Appellate Authority within a period of thirty days (30) from the date of receipt of a copy of this order.

9. If the petitioner file such an appeal as ordered above before the Appellate Authority within such time against the Impugned Order, the Appellate Authority shall dispose the appeal on merits within a period of sixty days (60) thereafter uninfluenced by any of the observation contained herein touching the merits of the case.

10. The writ petition stands dismissed with the above observations and liberty. No cost. Consequently, connected miscellaneous petition is closed.

17.07.2023

Neutral Citation: Yes/No
Speaking/Non-Speaking Order
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https://www.mhc.tn.gov.in/judis

<u>C.SARAVANAN, J.</u>

rgm

To

The State Tax Officer,
Arisipalayam Assessment Circle,
Salem

<u>W.P.No.6269 of 2020</u>
<u>and</u>
<u>W.M.P.No.7386 of 2020</u>