IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.7018 of 2020
and WMP No.8373 of 2020

Swamy Ayyappa Diesel Works
Represented by its Partner
K L Kumar
69, Kalarampatti Main Road
Salem 636 015. ... Petitioner

Vs

State Tax Officer
Salem Town (West)
Assessment Circle
Salem. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent herein in TIN No.33462823072/2011-12 dated 28.02.2020 quash the same.

For Petitioner : Mr.Sriram
for Mr.N.Inbarajan

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

O R D E R

The petitioner is a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') on the file of the respondent. It is engaged in the purchase and sale of diesel pumps and injectors, and parts and accessories thereof. It manages an authorized workshop approved by BOSCH.

2.In respect of the period 2011-12, the petitioner filed a return in Form K seeking the benefit of compounded rate of tax under Section 3(4) of the Act. Deemed assessments were completed and thereafter, on the basis of cross verification of purchases conducted with respect to the selling dealers, proceedings were taken up for revision of assessment.

3. Based on the web report, total purchases were determined at a sum of Rs.63.38 lakhs (approx.), to which Gross Profit at 28% as per the accounts was added, of a sum of Rs.17.74 lakhs (approx.), determining taxable turnover at a sum of Rs.81.13 lakhs (approx.).

4. The objection of the petitioner was that, out of the total purchases amounting to Rs.63.38 lakhs, a sum of Rs.16.31 lakhs (approx.), represented purchases for self-use. In submission dated 10.02.2020, a break-up of the purchases are provided, a single piece of machinery under bill No.513631099 of a sum of Rs.7.17 lakhs (approx.), and the remaining amount of Rs.9.13 lakhs, having been spent towards purchase of accessories and parts thereof.

The annexure to the written submissions set out the details of bill numbers towards the aforesaid purchases.

5. In my considered view, the stand adopted by the petitioner can well be accepted, subject to the petitioner establishing that the machinery purchases as above had, in fact, been utilised by it in its business activities and formed part of its closing stock at the end of that year.

6. While so, the impugned order has come to be passed by the respondent on the ground that, being a dealer, it was entitled to purchase goods for re-sale only and not for purposes other than re-sale. In stating so, the Assessing Authority ignores the fact that the petitioner is also an authorised workshop/service centre for BOSCH. It would require parts and accessories for that purpose and such purchases would form part of its own stock-in-trade/closing stock. To this extent, the impugned assessment order is liable to be reversed.

7. In light of the discussion as above, I am of the view that the Assessing Authority has not appreciated the submissions of the assessee in proper perspective and ought to have been engaged in a proper examination of the business operations of the petitioner. Having said so, I reiterate that, undoubtedly, it is the responsibility of the assessee to establish its case before the Assessing Officer, in relation to purchases made for self-use.

Dr.ANITA SUMANTH,J.

8. For this purpose, the assessment order is set aside and the officer is directed to re-do the same taking note of the observations made in this order and after hearing the petitioner. This exercise shall be completed within a period of eight (8) weeks from date of receipt of a copy of this order.

9. This Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

23.03.2023

Index : Yes / No
Speaking Order
Neutral Citation : Yes
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To

State Tax Officer
Salem Town (West)
Assessment Circle
Salem.

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