IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2023

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**W.P.No.30244 of 2023**
**and**
**W.M.P.No.29839 of 2023**

M/s.Shree Krishna Printers,
Rep. by its Partner,
Mrs.S.Saradhadevi,
27/1, Vivekananthar Salai,
Subramaniya Nagar,
Veerappampalayam,
Erode 638 009.

... Petitioner

**Vs.**

1.The State Tax Officer,
Thindal Assessment Circle,
Erode.

2.The Assistant Commissioner (ST)
Thindal Assessment Circle,
Erode.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN:33552902126/2015-16 dated 10.05.2022 and quash the same as passed contrary to the provisions of the TNVAT

Act, 2006 and also in violation of principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Ms.K.Vasanthamala,
Government Advocate

**ORDER**

The challenge in this writ petition is against the impugned order dated 10.05.2022.

2. Ms.K.Vasanthamala, learned Government Advocate, takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the respondent would submit that the said impugned order came to be passed subsequent to the issuance of notices by the respondent on 01.07.2020, 22.03.2021, 27.09.2021 and 02.11.2021. He would further submit that all these notices were received by the petitioner and after receipt of the same, no reply was filed. Under

these circumstances only, the impugned order came to be passed.

5. In reply, the learned counsel appearing for the petitioner would fairly submit that the petitioner had received all the notices. However, the only grievance of the petitioner is that at the last paragraph of the impugned order, it has been stated that the processing charges liable for TDS under Section 13(1) of the Income Tax Act (hereinafter called as “the Act”) was confirmed to an extend of a sum of Rs.76,62,986/-, but the said issue was not at all raised in any of the notices issued to the petitioner. Therefore, he would contend that without arising the issue in the notice, it is not proper for the respondents to all of a sudden bring a sum of Rs.76,62,986/- towards processing charges liable for TDS under Section 13(1) of the Act. Hence, he prayed to set aside the impugned order passed by the first respondent.

6. The learned counsel for the respondent would fairly submit that in notices issued by the respondents, they had not disclosed anything with regard to this aspect and hence, prayed for appropriate orders.

7. Heard the learned counsel for the petitioner and the respondent

and also perused the materials available on record.

8. In view of the above, if a notice was issued with regard to any aspect, the same has to be answered by the Assessee and it is for the Department to raise all the issues or queries by virtue of a show cause notice or by any other form and sought for the reply of the Assessee. However, in the present case, the Department had brought up the aforesaid issue of a sum of Rs.76,62,986/- towards processing charges which liable for TDS, only in the impugned order and the same was not at all raised in the show cause notices. Thus, the said impugned order is not in accordance with law.

9. Therefore, though the impugned order was passed on 10.05.2022 and the time limit to file the appeal was also expired at the time of filing this petition, this Court feels that the respondents had committed a serious error in its decision making process while dealing with the issue pertaining to a sum of Rs.76,62,986/- towards the processing charges liable to TDS and impugned order is not sustainable

and the same is liable to be set aside. Thus, this Court is inclined to set aside the impugned order dated 10.05.2022 and remit the matter back to the respondent for re-consideration. In such case, the petitioner is directed to file the reply within a period of 30 days from the date of receipt of copy of this order and the respondent is directed to consider the same on its own merits and pass an appropriate order in accordance with law.

10. With the above directions, this writ petition is disposed of. Consequently, the connected miscellaneous petition is also closed.

**17.10.2023**

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

**KRISHNAN RAMASAMY.J.,**
nsa

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**17.10.2023**
(1/2)