IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.9166 of 2021 and
W.M.P. Nos.9703 and 9710 of 2021

Tvl.Sivam Agencies,
Represented by V.Sundararajan (Managing Partner),
No.23-A, Sattayar West Street,
Nagapattinam-611001. .. Petitioner

Vs.

The Commercial Tax Officer,
Nagapattinam Assessment Circle,
Commercial Taxes Buildings,
Court Campus, Veliyapalayam,
Nagapattinam. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the Respondent in TIN.33653903014/2012-2013 vide impugned notice dated 10.01.2018 for the assessment year of 2012-2013 and culminating in the consequential order dated 11.05.2018 and quash the same as erroneous, illegal and consequently direct the Respondent to conduch fresh enquiry by affording personal hearing to the Petitioner.

For Petitioner : Mr.Kulandai Velu

For Respondent : Ms.Prashanth Kiran
Government Advocate

ORDER

The writ petition has been filed challenging the assessment dated 11.05.2018 pursuant to a show cause notice issued on 10.01.2018 primarily on the ground that it is made overlooking Circular No.5 dated 24.02.2021.

2. The learned counsel for the Respondent would raise a preliminary objection as to the maintainability of the writ petition on the premise that an effective alternate remedy is available under the TNVAT Act. It was submitted that the petitioner was subjected to a best judgment assessment on the basis of alleged difference noted between the purchase reported as per web report and the purchase reported as per the annual return of Form WW, to which a gross profit of 25% and sale value was estimated while treating the sames as sales suppression and corresponding penalty at 150% was also levied. The above issues in the order of assessment which are challenged essentially involves disputed questions of fact and was thus submitted that the writ petition ought not to be entertained.

3.The learned counsel for the petitioner would submit that this is a case of mismatch and thus needs to be resolved on the basis of Circular No.5 dated

24.02.2021 which was issued pursuant to the directions of this Court in the case of M/s. JKM Graphics Solution Private Limited vs Commercial Tax Officer reported in 99 VST 343. However, the impugned order of assessment has been made prior to the issuance of the above Circular and thus the impugned order of assessment suffers from serious infirmity and thus liable to be set aside.

4. This Court finds merit in the submission of the learned counsel for the Respondent that the issues arising out of the order of assessment involves examination of disputed questions of fact inasmuch as whether the issue is one of mismatch or otherwise and whether the best judgment assessment was warranted are essentially questions of fact and thus the writ petition ought not to be entertained inasmuch as examination of disputed questions of fact are matters which are beyond the realm of writ jurisdiction under Article 226 of the Constitution of India.

5. In view of the same, the writ petition is dismissed. The learned counsel for the petitioner seeks liberty to file an appeal. Accepting the above request, liberty is granted to the petitioner to file an appeal within a period of 4 weeks from the date of receipt of a copy of this order subject to complying with conditions

including pre-deposit, if any. Registry is directed to return original copies after retaining photocopies. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp/ Mka

<u>MOHAMMED SHAFFIQ, J.</u>

Spp/Mka

To:
The Commercial Tax Officer,
Nagapattinam Assessment Circle,
Commercial Taxes Buildings,
Court Campus, Veliyapalayam,
Nagapattinam.

<u>W.P. No.9166 of 2021 and</u>
<u>W.M.P. Nos.9703 and 9710 of 2021</u>

31.10.2023