BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.8238 of 2023 and
WMP(MD) No.7590 of 2023

Tvl.V.M.& Co,
Represented by its
Managing Partner
V.Manoharan,
S/o Thiru.Velusamy,
Ramanathapuram. ...Petitioner

Vs.

1.The Deputy Commissioner (ST)(Appeal)
Tirunelveli,
Camp at Virudhunagar,
Madurai Road,
Virudhunagar.

2.The Departmental Representative (ST),
Virudhunagar.

3.The State Tax Officer,
Ramanathapuram. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in S.P.No.08/2023 in TNVAT.AP.57/2019, dated 10.03.2023 and quash the same insofar as the condition to pay another 25% disputed tax i.e. Rs.1,85,877/- and also to furnish Bank Guarantee for the balance of tax and entire penalty of Rs.7,43,508/- is concerned and further direct the first respondent to grant stay till the disposal of the petitioner's appeal in TNVAT.AP.57/2019.

For Petitioner	: Mr.K.Srinivasan
For Respondents	: Mr.D.Gandhi Rajan Special Government Pleader

O R D E R

This writ petition is filed as against the order of the first respondent in S.P.No.08/2023 in TNVAT.AP.57/2019, dated 10.03.2023, directing the petitioner to pay 25% of the disputed tax i.e. Rs.1,85,877/- in addition to his earlier payment and also to furnish Bank Guarantee for the balance tax as well as the entire penalty of Rs.7,43,508/-.

2. The case of the petitioner is that the petitioner is engaged in works contract service and an assessee on the file of the third respondent. According to the petitioner, they are prompt in

filing the monthly returns as required under the Tamil Nadu Value Added Tax Act, 2006. The grievance of the petitioner is that the third respondent has passed a revision of assessment order in TIN: 33055444383/2016-17, dated 30.10.2019, based on the inspection conducted by the Enforcement Wing officials of the Commercial Taxes Department, dated 28.03.2017 and the same was challenged by the petitioner, by way of an appeal, under Section 51 of TNVAT Act before the first respondent/appellate Authority in the year 2019. At the time of filing an appeal, the petitioner has paid 25% of the disputed tax i.e Rs.1,85,877/-. The hearings in the appeal were already completed. However, the first respondent has not passed any order on the appeal filed by the petitioner for want of written arguments from the third respondent. While so, the third respondent has issued another demand notice, insisting the petitioner to pay the balance tax and penalty. Hence, the petitioner has filed a petition seeking an interim stay before the first Appellate authority and the first appellate authority has passed a conditional order directing the petitioner to pay further 25% of the disputed tax i.e Rs.1,85,877/- in addition to the amount already paid by the petitioner at the time of filing the appeal and also a direction has been issued to the petitioner to furnish bank guarantee for the balance tax amount Rs.7,43,508/- by order dated 10.03.2023. Aggrieved over the same, the present writ petition was filed.

3.The learned counsel appearing for the petitioner submits that though the petitioner has filed an appeal as early as on 30.10.2019, it has not yet been disposed of by the first appellate authority. Moreover, at the time of filing the appeal, the petitioner has paid the prescribed mandated amount. However, the first appellate authority has insisted the petitioner to make further payment of 25% of tax amount, which is *per se* illegal.

4.The learned Special Government Pleader appearing for the respondents submits that the petitioner is liable to pay Rs.9,29,385/- i.e (Tax Rs. 5,57,631/- with penalty Rs.3,71,754/-) in the year 2017. The Enforcement Wing officials of the Commercial

Taxes Department conducted a surprise inspection at the petitioner's office on 28.03.2017. While deciding the petition for stay, the first appellate authority has considered several factors, such as *prima facie* case, public interest, balance of convenience etc., and passed the above conditional order. Therefore, there is no reason to interfere with the order of the first respondent.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The petitioner has challenged the revision of assessment order in TIN:33055444383/2016-17, dated 30.10.2019 by way of a statutory appeal in TNVAT A.P.No.57/2019 on 30.10.2019, before the first respondent. At the time of filing the appeal itself, the petitioner has paid 25% of the disputed tax. By way of this impugned order, the first respondent insisted the petitioner to pay further 25% of the disputed tax. The appeal was filed in the year 2019 and it is yet to be disposed for want of written submission from the third respondent.

7.In view of the above, this writ petition is allowed and the impugned order of the first respondent in S.P.No.08/2023 in TNVAT.AP.57/2019, dated 10.03.2023 is set aside, with a direction to the first respondent to dispose of the appeal in TNVAT A.P.No. 57/2019, within a period of six weeks from the date of receipt of a copy of this order. Till such time, the respondents shall not take any coercive steps to recover the amount from the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

12.04.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
vrn

To

1.The Deputy Commissioner (ST)(Appeal)
Tirunelveli,
Camp at Virudhunagar,
Madurai Road,
Virudhunagar.

2.The Departmental Representative (ST),
Virudhunagar.

3.The State Tax Officer,
Ramanathapuram.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.8238 of 2023 and
WMP(MD) No.7590 of 2023

12.04.2023