IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14796 of 2021
and
W.M.P. No.15680 of 2021

M/s.Friends Aauto Gas
Represented by its Partner,
No.499, Naikar Mahal (Bus Stop), ..Petitioner
K.Chettipalayam, Dharapuram Road,
Tiruppur-641 608.

Vs.

The State Tax Officer,
Pongalur Assessment Circle,
Tiruppur. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Respondent in his proceedings in TIN 33512392413/2013-14, quash the assessment order dated 05.05.2021 passed therein.

For Petitioner : Mr.C.Subramanian

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

The present writ petition is filed challenging the order dated 05.05.2021 for the assessment year 2013-14 on the ground that the order suffers from error apparent on the face of the record.

2. The petitioner is engaged in the sales of Auto gas and is running an “auto liquefied petroleum gas” as an authorised dealer of M/s.Total Gas Oil India Pvt. Ltd. During the relevant assessment year, the petitioner had not produced books of accounts, purchase bills, sales bills and other documents when called for. The Respondent thus proceeded to make a best judgment assessment by adding 30% of total turnover reported in the monthly return as probable omission for non-production of books of accounts. The petitioner's claim of ITC was also rejected on the premise that the appropriate documentary evidence was not submitted, while also levying penalty.

3. It is submitted by the learned counsel for the petitioner that the petitioner had already discharged the tax in respect of the turnover disclosed in the monthly returns i.e., the turnover of Rs.1,10,61,009/-.

The impugned order suffers from error apparent inasmuch as it proceeds to demand taxes on the entire turnover viz., Rs.1,43,79,312/- i.e, including the turnover reported in the monthly return on which taxes has been already discharged. It was submitted that a rectification petition is also filed on 28.06.2021.

4. The learned counsel for the Respondent would submit that the writ petition is not maintainable inasmuch as there is an effective alternate remedy by way of an appeal.

5. This Court is of the view that the impugned order may not warrant interference inasmuch as the issue raised involves disputed questions of fact. Investigation of disputed questions of fact is an enquiry which is normally not undertaken under Article 226 of the Constitution of India and thus I find merit in the submission of the learned counsel for the Respondent and thus the present writ petition challenging the impugned order of assessment is rejected.

6. It was then submitted by the learned counsel for the petitioner that the rectification petition filed on 28.06.2021 has not been disposed of yet. To which, the learned counsel for the Respondent would submit that the above rectification petition would be disposed of within a period of 8 weeks from the date of receipt of a copy of this order.

7. Recording the same, the writ petition stands disposed of with a direction to the Respondent to dispose of the rectification petition within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

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

To:
The State Tax Officer,
Pongalur Assessment Circle,
Tiruppur.

MOHAMMED SHAFFIQ, J.

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W.P. No.14796 of 2021

22.03.2024