IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19753 of 2022

V.Vimalathithan
Prop.Tvl.Amman Pipes,
106, Gandhiji Road,
Mayiladuthurai. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Cuddalore,
Commercial Taxes Buildings,
Cuddalore.

2.The Commercial Tax Officer,
Mayiladuthurai Assessment Circle,
Mayiladuthurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in his proceedings in A.P.No.06/2022 VAT dated 14.06.2022 and quash the same.

For Petitioner : No Appearance

For Respondents : No Appearance

ORDER

There is no representation on behalf of the petitioner and the respondents either in person or through their counsel.

2. In this writ petition, the petitioner has challenged the impugned order dated 14.06.2022 passed by the Appellate Deputy Commissioner (ST), Cuddalore, whereby, the order passed by the Commissioner Tax Officer, Mayiladuthurai Assessment Circle in TIN.33614041843/2014-15, dated 10.02.2022 has been disclosed. By the impugned order, the first respondent has remanded the case back to the second respondent with the following observations:-

> *"I heard the arguments and the following order is made:*
> *Points for Consideration:*
> *1. Whether the sales suppression of Rs. 1,02,41,401/- @5% and Rs.7,34,514/- @14.5% arrived by the learned Assessing Officer towards the purchase omission noticed is sustained or not?*

2. Whether the penalty of Rs.9,27,862/- levied by the learned Assessing Officer is correct or not?

Point 1:

On perusal of the Assessment records for the year 2014-15, the Assessing officer has arrived actual suppression which resulted as of purchase omission noticed based on the extract of purchases details available in the departmental website gathered from Annexure-ll of the sellers. Looking up the cross verification data obtained from the departmental website revealed that there happened a transaction which was not declared in and as prescribed in the TNVAT Act 2006 either by the appellant or the seller at other end which is to be sorted out in this case. In order to ascertain the fact of imperfection where it happened, both the ends should be verified for want of records as prescribed in the TNVAT Act 2006.

At the outset, this Forum finds that this issue could be well settled out based on the ruling of the Honourable High Court of Madras in W.P.No.105 / 2016 in the case of JKM Graphics Vs the Commercial Tax Officer which is squarely applicable to the instant case for carrying out cross verification in such a way of mechanism discussed well.

In view of the above, this portion of appeal is set aside for fresh consideration and the Assessing Officer is directed to comply with the Orders as stated supra to unearth the facts and after making out such cross verification, based on the outcome of the same with concrete and appropriate evidence shall pass orders in accordance with the provisions laid down under TNVAT Act 2006. Hence this portion of appeal is remanded.

Point 2:

As the tax portion itself set aside for fresh consideration, consequently the corresponding penalty is *also set aside for fresh proceedings. Hence this portion of appeal is remanded."*

3. As such, there is no scope for interfering with the impugned order, as a matter has been remanded back to the second respondent to pass a fresh order in the light of the decision of this Court in the case of ***M/s.JKM Graphics Solutions Private Limited*** Vs. ***The Commercial Tax Officer, Vepery Assessment Circle, Chennai – 6*** reported in (2017) 99 VST 343. In fact that, the Principal Commissioner of Commercial Tax has also issued a circular to that effect.

4. It is expected that the second respondent will finalise the order as expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before final orders are passed.

5. Since, there is no merits in the present Writ Petition, it is accordingly dismissed with the above observations. No costs.

13.12.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

1.The Appellate Deputy Commissioner (ST),
Cuddalore,
Commercial Taxes Buildings,
Cuddalore.

2.The Commercial Tax Officer,
Mayiladuthurai Assessment Circle,
Mayiladuthurai.

C.SARAVANAN, J.

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