IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.20068 of 2023

M/s.M.M.Exports,
Represented by its Partner P.Mayilvaganan,
No.77-E, 1st floor,
Kaveri Avenue, MDS Nagar,
Salem-636 007,
Tamil Nadu. ...Petitioner

Vs.

The Assistant Commissioner,
Salem Town North Circle,
Commercial Taxes Department,
Pitchards Road, 3rd floor,
Hasthampatty Circle,
Salem-636 007,
Tamil Nadu. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN No.33122662918/2014-2015 dated 03.01.2018 and the consequential rejection order in Roc.No.2168/2018/A3 dated 19.01.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondents : Ms.Amirta Poonkodi Dinakaran, Government Advocate (T)

ORDER

An assessment order dated 03.01.2018 is challenged in this writ petition.

2. The petitioner is a partnership firm, which is engaged in the business of selling granites. As a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, the petitioner had filed returns. The dispute relates to transactions between the petitioner and Subiksha Granites. Pursuant to notice dated 28.12.2016, the impugned assessment order was issued on 03.01.2018. The petitioner filed a rectification petition, thereafter, on 18.01.2018, but such rectification petition was rejected on 19.01.2018. The present writ petition was filed after bank attachment orders were issued by the tax authorities.

3. Learned counsel for the petitioner invited my attention to the impugned assessment order and pointed out that Input Tax Credit (ITC) was reversed in respect of purchases made by the petitioner from Subiksha Granites. By referring to the challan at page 26 of the typed set of papers, learned counsel contends that Subiksha Granites had remitted

taxes. By further referring to the rectification petition, he pointed out that these facts were before the assessing officer but the assessing officer refused to rectify the assessment order. He also points out that the Karur Vysya Bank paid a sum of Rs.7,73,410/- pursuant to the attachment order issued by the tax authorities.

4. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, appears for the respondent. On instructions, she confirms that the sum of Rs.7,73,410/- was received by the tax authorities from the Karur Vysya Bank. In view thereof, revenue interest has been fully secured at the present juncture.

5. The documents on record indicate that the impugned assessment order was issued without hearing the petitioner. Consequently, the petitioner was unable to establish that the purchase transaction was genuine and that the seller / supplier remitted tax in respect thereof. In order to provide an opportunity to the petitioner to place all relevant documents on record, interference with the impugned assessment order becomes necessary.

6. Hence, the impugned assessment order is quashed and the matter

is remanded for reconsideration. The respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order. In relation to the above, the petitioner is permitted to submit a reply to the show cause notice dated 28.12.2016 within a maximum period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer shall issue a fresh assessment order in the manner aforesaid and in accordance with law and as per Circular No.3 of 2022, within a maximum period of two months from the date of receipt of petitioner's reply. For the avoidance of doubt, it is clarified that the amount received by the tax authority from the Karur Vysya Bank may be retained subject to the outcome of the remanded proceedings.

7. The writ petition is disposed of on the above terms. There will be no order as to costs.

04.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

The Assistant Commissioner,
Salem Town North Circle,
Commercial Taxes Department,
Pitchards Road, 3rd floor,
Hasthampatty Circle,
Salem-636 007,
Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J.

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