IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2025

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26835 of 2021
and W.M.P.No.28284 of 2021

Tvl.Santhilal & Co.,
Rep. by its Partner,
J.Santhilal,
No.45, Venkataraman Street,
Sevapet, Salem. ...Petitioner

Versus

The Assistant Commissioner (ST),
Sevapet Assessment Circle,
Salem. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent in TIN:33832740176/2014-15 dated 26.10.2021 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner	:	Mr.P.Rajavelu
For Respondent	:	Mr.V.Prashanth Kiran, Government Advocate

ORDER

Heard Mr.P.Rajavelu, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate for the respondent.

2. The present writ petition has been filed challenging the order dated 26.10.2021 in TIN:33832740176/2014-15 passed by the respondent.

3. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act"). The petitioner reported a total and taxable turnover of Rs.90,28,885/- and Rs.69,95,773/- respectively for the year 2014-2015.

4. Upon scrutinizing the returns filed by the petitioner with regard to the turnover for the year 2014-2015, it was found that there was a difference between the turnover reported by the petitioner and that reported by the other end dealer. Hence, the respondent vide Notice dated 08.10.2021, called upon the petitioner to file its objection with regard to the mismatch in the turnover reported by the petitioner. In response to the said notice, the petitioner had filed its Reply on 18.10.2021. However, the respondent has passed the impugned order dated 26.10.2021.

5. Operative portion of the impugned order dated 26.10.2021 reads as follows:

"Findings:

The dealer had produced the bill copies of all mismatched invoices to prove their genuineness in claim of ITC, but none of the bills produced by them were original. Hence, the genuineness in claiming of ITC could not be verified. Besides, as specified in the reference 4th cited, cross verification report have been called from the concerned circles. Based on the replies received from the assessment circles, notice has been issued to the dealer on 08.10.2021 and the tax due has been determined as follows:

	Turnover	***ITC***
Turnover Proposed	***Rs.19,52,822/-***	***Rs.2,18,947/-***
Turnover reported to be matched from other circle	***Rs.2,29,709/-***	***Rs.17,782/-***
Difference to be paid	***Rs.17,23,113/-***	***Rs.2,01,165/-***
Amount Paid		***NIL***

Besides penalty has been levied under sec 27(4) of TNVAT Act, 2006.

Penalty u/s 27(4):

Penalty is levied at 50% of the actual suppression as follows:

Actual tax suppression	***Rs.2,01,165/-***
Paid	***Rs.Nil***
Balance	***Rs.2,01,165/-***
Excess Paid as per the assessment order in the reference 4th cited	***Rs.2,71,685/-***
Excess	***Rs.70,520/-***
Penalty Proposed	***Rs.1,00,583/-***
Excess paid	***Rs.70,520/-***
Balance Penalty Payable	***Rs.30,063/-***

6. It is submitted that the impugned order is contrary to the principle laid down by this Court in the following decisions:

(i) Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) reported in ***(2013) 60 VST 283***

(ii) Infinity Wholesale Limited Vs. Assistant Commissioner reported in ***(2015) 82 VST 457***

7. The petitioner has an alternate remedy by way of an appeal before the Deputy Commissioner of Income Tax (ST) (GST-Appeal), Salem under the TNVAT Act.

8. That apart, in the present case, there are several disputed questions of fact which have to be decided in the hierarchy of the Appellate Authorities under the TNVAT Act. Therefore, this Court is not inclined to pass any orders on merits in the present case which may adversely impact the petitioner.

9. For the foregoing reasons, this writ petition is dismissed.

However, considering the fact that this writ petition has been filed within the period of limitation, liberty is granted to the petitioner to challenge the impugned order dated 26.10.2021 passed by the respondent by way of filing a statutory appeal before the Appellate Authority, within a period of 30 days from the date of the receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2025

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

Note: Registry is directed to return the original impugned order to the petitioner so as to enable the petitioner to file appeal before the Appellate Authority.

To

The Assistant Commissioner (ST),
Sevapet Assessment Circle,
Salem.

C.SARAVANAN, J.

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W.P.No.26835 of 2021

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