

(2009) 08 MAD CK 0244

Madras High Court**Case No:** Writ Petition No. 17076 of 2009 and M.P. No's. 1 and 2 of 2009

Sri Mounika Traders

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision: Aug. 24, 2009**Acts Referred:**

- Tamil Nadu Value Added Tax Act, 2006 - Section 22(2), 22(4), 22(6)

Citation: (2010) 35 VST 277**Hon'ble Judges:** V. Ramasubramanian, J**Bench:** Single Bench**Advocate:** R. Hemalatha, for the Appellant; R. Mahadevan, Additional Government Pleader (Tax), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The Petitioner was finally assessed on a total and taxable turnover exceeding Rs. 50 lakhs, u/s 22(2) of the Tamil Nadu Value Added Tax Act, 2006, for the year 2007-08. The assessment was made on February 27, 2009, on the basis of the self-assessment made by the Petitioner at the earliest point of time, despite the fact that the Petitioner had also filed revised returns on October 13, 2008 itself.

2. Subsequently, the assessing officer issued a notice u/s 22(4) and 22(5) proposing to revise the assessment on the ground that the payment of tax at 0.5 per cent was incorrect, since the turnover had exceeded Rs. 50 lakhs. It is against the said notice that the Petitioner has come up with the present writ petition.

3. Heard Mrs. R. Hemalatha, learned Counsel for the Petitioner. Mr. R. Mahadevan, learned Additional Government Pleader (Tax) takes notice for the Respondent.

4. Though what is impugned in the writ petition is only a notice, the Petitioner is aggrieved by the statement made in the notice that there is no provision in the

Tamil Nadu Value Added Tax Act, 2006 for filing of revised return. However it is seen from Section 22(6)(a) that there is a scope for the Assessee to file a fresh return, after originally filing a return. The provision reads as follows:

22. Procedure to be followed by assessing authority.-(1)... (6) (a) Any dealer assessed under Sub-section (4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for reassessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted:

Provided that no application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be.

5. The above provision makes it clear that after completion of the assessment u/s 22(4), the Assessee is entitled to apply to the assessing authority for reassessment "along with correct and complete return".

6. The expression "correct and complete return" and the power conferred upon the assessing authority to carry out reassessment, are all indications that a revised return is not allergic to the provisions of Tamil Nadu Value Added Tax Act. Therefore the Respondent may keep an open mind and examine the revised return, along with any documents and objections submitted by the Petitioner, as otherwise the very assessment order passed on February 27, 2009, without taking note of the revised return, may become vulnerable.

7. In view of the above, the writ petition is disposed of permitting the Petitioner to file objections to the impugned notice within two weeks from the date of receipt of a copy of this order. Upon the Petitioner submitting their objections, the Respondent shall examine the same, in terms of Section 22(6) (a) and carry out the reassessment within a period of four weeks from the date of submission of the objections by the Petitioner. No costs. The connected miscellaneous petitions are closed.