IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.9.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Appeal No.1318 of 2015

SSS Traders
rep. by its Managing Partner Senthil Kumar
No.204/B, Second Floor, Thangam Towers
Thuraiyur Road, Namakkal. .. Appellant /Petitioner

Vs.

The Commercial Tax Officer
Namakkal (Town) Assessment Circle
Namakkal. .. Respondents/Respondent

Appeal under cl.15 of Letters patent filed against the order dated 09.7.2015 made in W.P.No.19939 of 2015 on the file of this Court. W.P.No.19939 of 2015: Petition under Article 226 of the constitution of India, to issue a writ of certiorari calling for the records on the file of the respondent in Va.Vi.No:- 33253/23742/2013 dated 06/04/2015 and quash the same as being without Juristiction and authority of law.

For Appellant : Mr.R.Senniappan

For Respondent : Mr.Kanmani Annamalai

J U D G M E N T

(Delivered by V.Ramasubramanian,J.)

Aggrieved by the dismissal of their writ petition challenging an order of assessment, the assessee has come up with the above writ appeal.

2. Heard Mr.R.Senniappan, learned counsel for the appellant and Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondent.

3. The appellant is a registered dealer in respect of Maize and other products, both under the TNVAT Act, 2006 and under the CST Act, 2006. Maize is a product that is granted exemption under Entry No.19 of Part-B of the IV Schedule to TNVAT Act, 2006. Therefore, the appellant reported a taxable turnover of Nil in the return filed

every month.

4. However, they were issued with a notice under Section 22(4) of the TNVAT Act, 2006 on 04.3.2015 proposing to disallow their claim for exemption. It was on the ground that the appellant was selling Maize to a customer who was using it as a Maize waste for poultry feeding. The appellant gave a reply dated 16.3.2015 pointing out that the Entry as such does not distinguish between Maize and Maize waste and that the grant of exemption cannot depend upon the purpose for which the product is used, especially by a person who buys it from a registered dealer.

5. However, overruling the objections of the appellant, the Assessing Officer passed an order dated 06.4.2015. Aggrieved by the said order, the appellant filed a writ petition in W.P.No.19939 of 2015. The writ petition was dismissed at the stage of admission, by the learned Judge, on the ground that the appellant has an alternative remedy of appeal. Therefore, the appellant is before us.

6. It is true that the appellant has a statutory alternative remedy of appeal under the Act. It is also true that in normal circumstances, we would be hesitant to entertain a writ petition against the order of assessment. But, this rule is not without exceptions. Whenever there is any violation of the principles of natural justice or whenever there is lack of jurisdiction on the part of the Assessing Officer, this Court is not powerless to entertain a writ petition.

7. In the case on hand, there is no dispute about the fact that Maize is granted exemption, by virtue of being included in Entry No.19 of Part-B of IV Schedule to the Act. The circular issued by the Department in letter No.VAT Cell/18028/2007(VCC No.477) dated 15.5.2007 reads as follows:

> "Maize and Jowar: Maize and Jowar are exempted from tax vide entry No.14(i) of Part-B to Schedule III under the TNGST Act 1959 with effect from 27.3.2002 and the exemption continues to be in force under Section 88(3)(i) of the TNVAT Act 2006 with effect from 01.01.2007."

8. Yet another circular issued in letter No.VAT Cell/22840/2007 (VCC No.606) dated 31.5.2007 reads as follows:

> "Maize: Maize are exempted from tax vide entry No.19 of Part-B to IV Schedule to TNVAT Act 2006 with effect from 01.01.2007."

9. There is no dispute about the fact that what was sold by the appellant was Maize. Even the Assessing Officer does not dispute that what was sold by the appellant was Maize. But, unfortunately, the Assessing Officer had gone by the fact that the person to whom Maize was sold, used it as waste for poultry feeding. There is nothing

either in the Act or in the circulars to indicate that the eligibility of a product for exemption depended upon its usage. The exemption was a product based exemption and not user based exemption or an assessee based exemption. Therefore, this is a case where the Assessing Officer committed a jurisdictional error warranting interference by this Court. Hence, the writ appeal is allowed, the order of the learned Judge is set aside and the order of assessment impugned in the writ petition is set aside. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

kpl
To
The Commercial Tax Officer,
Namakkal (Town),
Assessment Circle
Namakkal.

+1 cc to R.Senniappan, Advocate, sr.52745
+1 cc to The Special Government Pleader(Taxes), sr.53113

W.A.No.1318 of 2015.

ug co
kra 05/10