IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13580 of 2015
And
M.P.No.1 of 2015

Venkateswara Glass House
Rep. by its Proprietor Mr.M.Venkatesh ... Petitioner

Vs.

The Commercial Tax Officer
Hosur (South) ... Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the order dated 17/03/2015 in TIN No.33853366494/ 2013-2014 from the file of the respondent and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Haribabu
Additional Government Pleader (T)

ORDER

By consent of both the parties, the writ petition is disposed of, at the stage of admission itself.

2.This writ petition has been directed against the impugned order on the ground that the issue raised in the writ petition is covered by the decision of this Court reported in MANU/TN/1604/2003 (K.Purushothaman Vs. The State of Tamil Nadu rep. by the Secretary to Government Commercial Taxes and Religious Endowments Department and The Deputy Commercial Tax Officer (Main)).

3.Mr.V.Haribabu, learned Additional Government Pleader (T) appearing for the respondent also fairly acceded to the said proposition and requested to dispose of the matter in the line of the observation made by this Court.

4.It is made clear that provisional assessment demanding tax due without notice and independent order for each month is bad in law. That has been considered in the reported case as follows:

> "1.Aggrieved by the impugned order of provisional assessment dated 14.5.2003 of the second respondent demanding the tax due to the tune of Rs.2,14,868/-, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings in CST No.361539/2002-03, dated 14.5.2003 and quash the same as illegal and direct the second respondent to pass a fresh order by granting exemption on the interstate sales turnover of Coconut by following the decision of the Tamil nadu Sales Tax Appellate Tribunal (Addl. Bench) Madurai in MTA No.976/2001, dated 14.3.2002 and by following the clarification of the Special Commissioner and Commissioner of Commercial Taxes in Acts Cell III/65129/98, dated 12.3.1999.
>
> 2.1.Mr.S.Ramanathan, learned counsel for the petitioner contends that after completion of the assessment year, the respondents have no jurisdiction to pass a provisional assessment order as per the ratio laid down by the Division Bench of this Court in STATE OF TAMIL NADU v. WNADER LIMITED reported in 1990 79 STC 421 Madras, following an earlier decision of the Division Bench of this Court in MAHENDRA KUMAR ISHWARLAL & CO v. DEPUTY COMMERCIAL TAX OFFICER reported in 1971 (28) STC 551 Madras.
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> 2.2.Secondly, Mr.S.Ramanathan, learned counsel for the petitioner, contends that the respondents, in the notice dated 27.1.2003, before passing the impugned provisional order dated 14.5.2003, referred to the tax due only for months of December, 2002, January, 2003 and February, 2003, but however, in the impugned provisional assessment order dated 14.5.2003, they included the tax due for the months March, 2003 and April, 2003, even without issuing a fresh notice for the same.
>
> 2.3.Thirdly, Mr.S.Ramanathan, learned counsel for the petitioner, contends that the provisional

assessment order dated 14.5.2003 demanding tax dues for all the five months jointly, without notice and independent order for each month, is bad in law.

3.Mr.Manohar Sundaram, learned Government Advocate fairly concedes that the impugned provisional assessment order dated 14.5.2003 is bad in law in view of the ratio laid down by the Division Bench of this Court in STATE OF TAMIL NADU v. WNADER LIMITED reported in 1990 79 STC 421 Madras, following an earlier decision of the Division Bench of this Court in MAHENDRA KUMAR ISHWARLAL & CO v. DEPUTY COMMERCIAL TAX OFFICER reported in 1971 (28) STC 551 Madras.

4.If that be so, without referring to the other contentions raised by the learned counsel for the petitioner, I am inclined to allow this writ petition and quash the impugned provisional assessment order dated 14.5.2003, however without prejudice to the right of the respondents to pass fresh orders in accordance with law, if they are so advised. No costs. Consequently, W.P.M.P.No.23023 of 2003 is closed."

5.In view of the above, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

pri Sub Assistant Registrar

To

The Commercial Tax Officer
Hosur (South).

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.24792

W.P.No.13580 of 2015
And
M.P.No.1 of 2015

MG(CO)
CA(26/05/2015)