IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MRS.JUSTICE S.VIMALA

W.A.No.1566 of 2015
and
M.P.No.1 of 2015

Tvl. Dhanaselvi Enterprises,
Rep. By its Partner, R.Parpugazh,
No.1, Rajarathinam Street,
West Tambaram,
Chennai - 600 045 .. Appellant / Petitioner

..Vs..

The Commercial Tax Officer,
Tambaram Assessment Circle,
No.19-A Sivashanmugam Road,
West Tambaram, Chennai - 600 045 .. Respondent/Respondent

PRAYER: Writ Appeal filed under clause 15 of the Letters Patent Act against the order passed by this Court in W.P.No.21005 of 2015 dated 15.07.2015.

Prayer in WP No.21005/2015: Writ petition filed under Article 226 of the constitution of India praying issue a writ of certiorari to call for the records of the respondent in TIN No.33941368099/2013-2014 dated 29/05/2015 and the consequential proceedings dated 09/06/2015 in TIN No.33941368099/2013-2014 and quash the same as illegal, arbitrary and without jurisdiction and against the Principles of natural justice.

For Appellant : Mr.K.Soundarajan
For Respondents : M/s.Kanmani Annamalai

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.)

The Appellant/petitioner is a whole-sale dealer in cements and a registered dealer under the Tamil Nadu Value Added Tax Act as well as under the Central Sales Tax Act. The petitioner is an assessee on the file of the respondent.

2. In the Cement Industry, various types of incentives/discount are offered by the Companies to their dealers, with a purpose behind it, i.e. with a view to promote the business, aiming for higher profit, at the same time, not affecting the value of the cements.

3. The respondent issued pre-assessment notice, dated 30.04.2015, proposing to tax the discounts offered by the Cement Companies. The Assessee filed objections to the proposal on 22.05.2015. The Respondent relying on Section 19(20) of the TNVAT Act had proposed to levy tax on the said discounts. The respondent has passed an order dated 29.05.2015 subjecting the discounts to tax.

4. The Appellant/Petitioner filed a Rectification Petition which was rejected on the same day, i.e. On 09.06.2015. Therefore, a Writ Petition in W.P.No.21005 of 2015 was preferred before this Court, challenging the order, levying tax on the discount offered by the Cement Companies. The Writ Petition was dismissed with a direction to file a Statutory Appeal. Challenging the dismissal, the Writ Appeal has been filed.

5. It is contended by the appellant that, in similar circumstances, when the order passed by the learned Single Judge order was challenged by other dealers in W.A.Nos.1038 to 1040 of 2015, this Court, by an order dated 05.08.2015, had allowed the Appeals and directed the Respondent to decide the issue a) by taking into account the circular of the Commissioner dated 04.11.2013 and (b) the assessment order, dated 31.03.2015, passed in respect of a dealer M/s.Sree Laxmi Traders, to whom, it is alleged that, the discounts were not subjected to tax. In support of this contention, the order passed in W.A.Nos.1038 to 1040 of 2015 has been produced.

6. A perusal of the order passed in W.A.Nos.1038 to 1040 of 2015 discloses that following the circular of the Commissioner, one of the sister companies of the Appellants therein, by name, M/s.Sree Laxmi Traders, appeared to have had the benefit in respect of the assessment years 2007-08, 2008-09, 2009-10 and 2010-11.

7. It is contended that when the main ground alleged by the appellant is with reference to interpretation of a circular issued by the Joint Commissioner and the circular is, on the scope of interpretation of Section 19(20) of the Tamil Nadu Value Added Tax 2006, there is no necessity for the appellant to invoke the remedy of statutory appeal and this Court should

decide this issue in the Writ Appeal.

8. The constitutional validity of Section 19(20) of the TNVAT Act has already been upheld by this Court. The finding of the Assessing Officer is that discount by any other name, it may be called, such as, commission, gift, will, squarely falls under Section 19(20) of the TNVAT Act 2006 and therefore, the discount is also liable to be taxed. This finding is based on facts.

9. The main grievance of the appellant is that when the Companies similarly placed have been granted benefits of exemption from the tax on discounts, the appellant alone cannot be singled out without any basis and not even affording an opportunity of personal hearing.

10. It is not in dispute that personal hearing was not given to the appellant. Principles of natural justice require that the appellant should have been offered personal hearing. Therefore, the order dated 29.05.2015 of the respondent is hereby set aside. The matter is remitted back to the respondent. The respondent shall offer personal hearing to the appellant. While the personal hearing is offered, it is open to the appellant to produce the order copy passed in respect of M/s.Sree Laxmi Traders, and to claim the benefit. It is for the respondent to consider on the applicability of the order passed in respect of M/s.Sree Laxmi Traders.

11. In the result, the Writ Appeal is ordered in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
The Commercial Tax Officer,
Tambaram Assessment Circle,
No.19-A Sivashanmugam Road,
West Tambaram,
Chennai - 600 045.

W.A.No.1566 of 2015

gj co, kra 25.01.2016