IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 01.06.2016

Coram

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14462 to 14465 of 2016
and
W.M.P.Nos.12640 to 12643 of 2016

M/s.Cumbum Valley Winery Private Limited
Rep. by its Managing Director
..Petitioner in all W.Ps.

/vs/

1 The Managing Director
Tamil Nadu State Marketing Corporation Limited
CMDA Tower, Egmore, Chennai 8.

2 The Commissioner of Prohibition and Excise
Chepauk, Chennai - 5.

3 The Assistant Commissioner (CT)
K.K.Nagar Assessment Circle
New No.55/Old No.16 Dr.Govindan Road
West Mambalam, Chennai - 33...Respondents in all W.Ps.

These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in his proceedings of the impugned orders in TIN 33611464456/2012-13, TIN 33611464456/2013-14, TIN 33611464456/2014-15, TIN 33611464456/2015-16 dated 14.03.2016 passed by the 3rd respondent and quash these revision of assessment proceedings as illegal, unconstitutional and direct the 3rd respondent to pass fresh orders by verifying the claims of sales returns with the records and accounts of the petitioner by following the principles of law declared as per the Division Bench orders of the Honourable Madras High Court in the case reported in 47 VST 56.

For Petitioner in all W.Ps. : Mr.C.Baktha Siromoni

For Respondents in all W.Ps. : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

The petitioner in all these Writ Petitions, who is a registered dealer under the provisions of Tamil Nadu Value Added Tax Act, is engaged in the manufacture of wine. The petitioner had been issued with purchase orders by the Tamil Nadu State Marketing Corporation Limited (TASMAC), Chennai, for the supply of wine to be sold in the retail outlet. Those supplies were effected during various assessment years. It appears that samples were drawn from the supplies effected and sent to the Forensic Laboratory for testing. Pursuant to which, it was found that the wine did not satisfy the parameters fit for human consumption. Therefore, the Commissioner of Prohibition and Excise has passed orders to return the entire stock supplied. However, this return was not in one single lot, but in a phased manner periodically and the petitioner is stated to have been gone to all retail outlet of TASMAC and taken back the product supplied. All these facts were pleaded before the authority at the time of personal hearing, however, the authority did not take into consideration the same and stated that the sales return copy was furnished only at the time of hearing and they failed to prove the prior reporting before the receipt of pre-assessment notice.

2. Heard the learned counsel for the parties.

3. The observation made by the authority in the impugned order may be justified if the case of the dealer is relating to the transaction with a private party. But in the instant case, the transaction was with a Government Department, viz., a Government Corporation and the sales returns were pursuant to the orders passed by the Commissioner of Prohibition and Excise and therefore, there can be no doubt as to the genuineity of those orders, which have been passed by the authorities, especially when the second respondent / Commissioner of Prohibition and Excise is a statutory authority under the Tamil Nadu Prohibition Act. Therefore, this Court is of the view that the petitioner should be offered with one more opportunity by the Assessing Officer to produce all the records issued by the various authorities for proper verification and consideration and on receipt of such records, the authorities have to re-examine the matter.

4. Accordingly, the Writ Petitions are allowed. The impugned orders are set aside and the matters are remanded to the third respondent for fresh consideration. The third respondent shall issue notice calling upon the petitioner to produce all the records within two weeks from the date of receipt of a copy of this order and on receipt of such notice fixing the date of hearing, the

petitioner through their authorised representatives shall appear before the third respondent and produce all the records and the petitioner is also permitted to place written submission, which shall be submitted before the third respondent and the third respondent is directed to pass fresh orders and communicate the same to the petitioner as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To:

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1 cc to Mr.C. Bakthasiromoni, Advocate, Sr. 29345
1 cc to Government Pleader (Taxes), Sr. 29360

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SCD (CO)
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