IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.33588 & 34556 of 2015 &

M.P.Nos.1 & 1 of 2015

Tvl. S.P.Superfine Cotton Mills Private Limited
Rep. by its Managing Director
P.Velusamy No.1/152, Cuddalore Main Road
Kalpaganur P.N.Palayam (Via)
Attur Taluk Salem District .. Petitioner in both W.Ps

v.

The Commercial Tax Officer
Attur (Rural) Assessment Circle
Attur. .. Respondent in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records on the files of the respondent in TIN. No.33433261286/2012-13 dated 25.9.2015 and TIN. No.33433261286/2012-13 dated 14.10.2015 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader (T)

COMMON ORDER

Writ Petition No.33588 of 2015 has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN. No.33433261286/2012-13, notice dated 25.9.2015 and to quash the same, as being without jurisdiction and authority of law.

2. Writ Petition No.34556 of 2015 has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN. No.33433261286/2012-13, assessment order dated 14.10.2015 and to quash the same, as being without jurisdiction and authority of law.

3. It is the case of the petitioner that the notice 25.9.2015, issued by the respondent, is liable to be quashed as being contrary to the principles laid down by this court in Vol.51 Sales Tax Cases-278 [Monsanto Chemicals of India (P)

Limited v. The State of Tamil Nadu]. Further, the impugned notice issued by the respondent is liable to be quashed, since it is contrary to Explanation-III of Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006. That apart, the impugned notice 25.9.2015 and the assessment order dated 14.10.2015 were issued as per the instructions from the Superior Officer and therefore, the respondent being a quasi-judicial Officer, ought not have followed the directions issued by his Superior Officer.

4. Mr.R.Senniappan, learned counsel appearing for the petitioner submitted that the issue involved in the present writ petitions are covered by the decision of the Division Bench of this court reported in Vol.51 Sales Tax Cases-278 [cited supra] , wherein, the Division Bench of this court held as follows:-

> " that a person might carry on several lines of business and each line of business would be a unit of business by itself. If there was a sale of that unit of the business as a whole, then the assessee would not be liable to be taxed either on the general principle that there was no sale in the course of business as closure of a line of business could not be incidental or ancillary to its carrying on or on the alternative basis of application of Rule 6(d) of the Tamil Nadu General Sales Tax Rules, 1959. On the facts of the case, the assessee was eligible for the exemption in respect of those turnovers under either of those two grounds."

5. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent submitted that the issue involved in the present writ petitions are covered by the decision relied upon by the petitioner.

6. Having regard to the submissions made by the learned counsel on either side, following the dictum laid down by the Division Bench of this court reported in Vol.51 Sales Tax Cases-278 [cited supra], the impugned notice dated 25.9.2015 and the assessment order dated 14.10.2015 are liable to be set aside. Accordingly, the same are set aside. So far as the other issue is concerned, the respondent is directed to consider the case of the petitioner by giving an opportunity of personal hearing to the petitioner and decide the matter afresh.

With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Rj

To

The Commercial Tax Officer
Attur (Rural) Assessment Circle
Attur.

+1 cc to Mr.R.Senniappan, Advocate, sr.10477
+1 cc to The Special Government Pleader, sr.10423

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M.P.Nos.1 & 1 of 2015

ug co
kra 23.02.2016