IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10868 of 2004

Tvl.New Kousika Sweets
Rep. by Mr.N.Ramachandran ... Petitioner

Vs.

1.The Commercial Tax Officer,
Ramnagar Assessment Circle,
Coimbatore - 18.

2.The Secretary,
Commercial Taxes and Religious
Endowments Department,
Chennai - 9. ... Respondents

Prayer:
Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in TNGST.304824/89-90 dated 22.03.2004 and quash the same and to further direct the respondents to desist from taking coercive action to collect these "to be waived sales tax demands" for the year 1989-90 till the settlement commission is constituted and are processed by it.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition challenging a notice of demand dated 22.03.2004, demanding payment of tax of Rs.95,387/- for the assessment year 1989-90 under the provisions of Tamil Nadu General Sales Tax Act, 1959.

3.It is not in dispute that the petitioner was not successful in questioning the order of assessment dated 27.10.1992, as the Appeal as well as the Tax Case Revision filed by the petitioner were all dismissed. Subsequently, the petitioner has gone before the Sales Tax Commission under

Section 39 of the Act which has been constituted pursuant to the powers conferred under Section 35 A of the TNGST Act. It is noted that originally the Section was introduced as Section No.39 inserted by Section 20 of the 7th amendment Act, 22 of 2002 with effect from 01.07.2002. Subsequently, the section was re-numbered as Section 35A by Section 3 of Amendment Act 11 of 2005 with effect from 13.07.2005.

4.Taking into consideration the fact that the petitioner has paid Rs.10,000/- as against the disputed tax, the matter is sent back to the second respondent for appropriate action on the petitioner's application dated 29.03.2004. If as on date, the Commission does not exist, then the second respondent shall refer the matter to the appropriate authority who is entitled to exercise the power of the Commissioner under the erstwhile TNGST Act. The above direction shall be complied with by the second respondent, within a period of four months from the date of receipt of a copy of this order and till orders are passed in terms of the above action, no coercive action shall be initiated against the petitioner for recovery of balance of tax and penalty.

5.This writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer,
Ramnagar Assessment Circle,
Coimbatore - 18.

2.The Secretary,
Commercial Taxes and Religious
Endowments Department,
Chennai - 9.

+1 cc to Spl.Govt.Pleader,sr.50457

+1 cc to Mr.R.Senniappan,advocate,sr.50397.

ca(co)
krd 26/9

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