IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25854 of 2016
&
WMP No.22153 of 2016

1 M/s.Jothi Cashews
Rep. by its Partner Mr.S.Jothi
Cuddalore District.

[PETITIONER]

Vs.

1 The Commercial Tax Officer
Panruti Rural Assessment Circle Panruti
Cuddalore District.

2 The Commissioner of Commercial Taxes/
The Principal Secretary
Ezhilagam, Chepauk,
Chennai-600 005.

[RESPONDENTS]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ Of Certiorarified mandamus to call for the impugned proceedings of the first respondent in TIN 33044500821/2015-2016 and quash the impugned order dated 23.5.2016 as passed contrary to the provisions of the TNVAT Act and the Circular No.26/2014 dated 16.6.2014 issued by the second respondent and further direct the first respondent to pass a fresh order in accordance with law under the provisions of the Central Sales Tax Act after considering Passed Status Report found in the E-Transit pass System of the Tamil Nadu Government Commercial Taxes Department Website and the E Way Bills and e-C Forms issued by the buyers in other State to prove that the goods covered by the E Transit Passes had actually crossed the borders of Tamil Nadu State.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.Manokaran Sundaram
Addl. Government Pleader

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the Central Sales Act and Tamilnadu Value Added Tax, has filed this Writ Petition, challenging the assessment order dated 23.05.2016.

3.Though several grounds were raised by the petitioner and elaborate submissions were made on the factual aspects, this Court is not convinced to entertain the Writ Petition for the simple reason that all the contentions raised by the petitioner are factually incorrect. That apart, though pre-revision notice was issued on 01.04.2016 and received by the petitioner, the petitioner has not cared to submit his reply and after having failed to file the reply before the Assessing Officer, has now cannot come before this Court and raise factual and legal issues.

4.Therefore, this is not a case of violation of principles of natural justice and non-application of mind on the part of the respondent, but it is a clear case where the petitioner has failed to avail the opportunity granted to him and has remained dormant. Therefore, the petitioner cannot maintain this Writ Petition, challenging the impugned assessment order.

5.The learned Additional Government Pleader, pointed out that the entire transaction is a bogus transaction and to demonstrate the same, he has referred to the e-Way Bill issued by the Commercial Taxes Department, Government of Telangana showing that the date of issue is 01.08.2015 and the date of Invoice is also 01.08.2015 and it is beyond ones comprehension that the goods would have reached Telangana Border on the same day at 09.00 am. That apart, it is seen that the petitioner is dealer in phenyl, and it is surprising to note that he is engaged in the transaction with regard to cashew shell oil and other materials.

6.In the light of the above the Writ Petition is dismissed as not maintainable. However, liberty is granted to the petitioner file an Appeal before the Appellate Authority and if such Appeal is filed within a period of thirty days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the Appeal, without reference to the limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

rpa Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Commercial Tax Officer
Panruti Rural Assessment Circle Panruti
Cuddalore District.

2 The Commissioner of Commercial Taxes/
The Principal Secretary
Ezhilagam, Chepauk,
Chennai-600 005.

3. The Appellate Authority,
Commercial Tax,
Cuddalore District.

+ 1 cc to M/s.A.Shanmugaraj, Advocate Sr 40002

+ 1 cc to Mr.P.Rajkumar, Advocate Sr 41976

KR/25/7/16

W.P.No.25854 of 2016