In the High Court of Judicature at Madras

Dated : 18.8.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28823 & 28824 of 2016
& WMP.Nos.24886 to 24889 of 2016

M/s.Same Deutz-Fahr India Pvt.Ltd.,
rep.by its Constituted Attorney/
Authorized Signatory S.Tamilselvan,Vellore. ...Petitioner

Vs

1.The Assistant Commissioner (CT)
(FAC), (SIPCOT) Assessment Circle,
Raniept (SIPCOT), Vellore District.

2.The Appellate Deputy Commissioner
(CT), Commercial Taxes Building,
Vellore, Vellore District. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the file of the second respondent in its impugned orders passed respectively in Appeal No. & year : 735/15 and 736/15 dated 20.5.2016 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
For Respondents: Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for final disposal.

2. In these writ petitions, the petitioner has challenged the orders passed by the second respondent - Appellate Authority in the appeals filed by the petitioner challenging the rejection of refund claim made by the petitioner.

3. On a perusal of the impugned orders, it is seen that the Appellate Authority, after mentioning about the facts of the case, has verbatim reproduced the grounds of appeal raised by the petitioner. The discussion starts from page 10 of the impugned orders. Since paragraphs are not numbered, this Court is unable to mention the paragraph numbers. Though the Appellate

Authority has discussed about the legal position, one crucial aspect, which missed the attention of the Appellate Authority, is that in the absence of Annexures 1 and 2, the Appellate Authority was unable to verify the details of the purchases effected, the details of the sales effected and the nature of claim for refund. If that is the factual position, the Appellate Authority should have immediately directed the Assessing Officer to produce Annexures 1 and 2. However, without doing so, she proceeded to discuss the legal issue raised by the petitioner.

4. The basic principle is that firstly the Appellate Authority is expected to decide the matter on facts and then consider the judgments, which were relied upon by the petitioner and if, in his opinion, the judgments are distinguishable, then reasons thereof shall be recorded. However, in the instant case, in the absence of details of purchases effected and the details of sales effected, the Appellate Authority could not have examined the nature of claims for refund. If that be so, then the Appellate Authority should have refrained from discussing about the legal issue or recording the effect of various judgments, on which the petitioner placed reliance. Therefore, this is a fit case where the Appellate Authority should be directed to reconsider the claim made by the petitioner after calling for necessary records from the Assessing Officer.

5. In the light of the above, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the second respondent for fresh consideration. The second respondent shall direct the Assessing Officer to place before her, Annexures 1 and 2 so as to enable the Appellate Authority to verify the details and thereafter examine the justifiability of the claim for refund made by the petitioner. No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner (CT) (FAC), (SIPCOT) Assessment Circle,
Raniept (SIPCOT), Vellore District.

2.The Appellate Deputy Commissioner (CT), Commercial Taxes Building,
Vellore, Vellore District.

+2 cc's to M/s.R.Hemalatha, advocate,sr.47080

+1 cc to Spl.Govt.Pleader,sr.47258.

bvr(co)
krd 31/8