IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.17569 to 17581 of 2012

M/s K.K.S.Abdul Samad Sahib .. Petitioner in W.P.Nos.17569 to 17581/2012

..Vs..

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
Coimbatore 18.

2.The Appellate Assistant Commissioner (CT)
Erode.

3.The Commercial Tax Officer
Periya Agraharam Circle
Erode.

.. Respondents in W.P.Nos.17569 to 17581/2012

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in CTA No.83/04, quash the order dated 19.02.2007 passed therein and further direct the first respondent to decide the appeal on merits in the light of the judgment of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dt 24.11.2011 and the Judgment of this Court reported in 35 VST 2016.

WP No.17570 of 2012

To call for the records of the 1st respondent in CTA No.73/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17571 of 2012
To call for the records of the 1st respondent in CTA No.74/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17572 of 2012
To call for the records of the 1st respondent in CTA No.75/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17573 of 2012
To call for the records of the 1st respondent in CTA No.76/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17574 of 2012
To call for the records of the 1st respondent in CTA No.77/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17575 of 2012
To call for the records of the 1st respondent in CTA No.78/04 quash the order dated 19.2.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17576 of 2012
To call for the records of the 1st respondent in CTA No.79/04,

quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17577 of 2012
To call for the records of the 1st respondent in CTA No.80/04, quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17578 of 2012
To call for the records of the 1st respondent in CTA No.81/04, quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17579 of 2012
To call for the records of the 1st respondent in CTA No.82/04, quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17580 of 2012
To call for the records of the 1st respondent in CTA No.84/04, quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in the light of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

WP No.17581 of 2012:
To call for the records of the 1st respondent in CTA No.85/04 quash the order dated 19.02.2007 passed therein and further direct the 1st respondent to decide the Appeal on merits in thelight of the Judgement of the Apex Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the

petitioner is a Member) Vs. State of Tamil Nadu and another in C.A.No.3773 of 2000 dated 24.11.2011

For Petitioner : Mr.S.Sivakumar

For Respondents: Ms.Vasudha Thiyagarajan
Addl.Govt.Pleader

COMMON ORDER

Heard Mr.S.Sivakumar, learned counsel for the petitioner and Ms.Vasudha Thiyagarajan, learned Additional Government Pleader appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal. Since the issue involved in all these Writ Petitions are one and same, they were clubbed together and are disposed of by the common order.

2.The question involves in these Writ Petitions are squarely covered by the decision of the Hon'ble Supreme Court in the case of All India Skin & Hide Tanners & Merchants Association (of which the petitioner is a member) Vs. State of Tamil Nadu and another [C.A.No.3773 of 2000 dt 24.11.2011]. In the said batch of Appeals, which were also challenging similar orders, the Hon'ble Supreme Court allowed the Appeal, set aside the assessment orders and directed the Assessing Officer to re-examine the matter. At this stage, it would be beneficial to refer to the order and direction issued by the Hon'ble Supreme Court:

> "We have heard the learned counsel for the parties at some length.
>
> Having regard to the nature of the controversy involved in all these appeals, we are of the opinion that in the light of the decision of the Constitution Bench of this Court in State of Karnataka versus Azad Coach Builders private Limited and Another (2010) 9 SCC 524], it would be proper and expedient if the issue raised in these appeals are re-examined by the Assessing Officer, at the first instance. One of the reasons why we have thought it fit to remit the cases back to the Assessing Officer is that in all these appeals the Appellate authorities as also the High Courts proceeded on the "same goods" theory, which has been subsequently considered by the Constitution Bench in the afore-mentioned decision.
>
> Accordingly, we dispose of these appeals and remit them to the concerned Assessing Officers for

fresh decision in respect of the years in question. The Assessing Authority is hereby directed to pass fresh assessment orders, as expeditiously as practicable, and, in any case, not later than four months from the date of receipt of a copy of this order. However, we direct that the Assessing Officer shall not take any coercive steps for recovering any additional demand, which may be created pursuant to the fresh assessment orders, for a period of one month from the date of communication of the order of assessment. It will be open to both the parties to lead any additional evidence if they propose to do so. It will also be open to both parties to urge all the grounds which may be available to them in accordance with law.

The appeals stand disposed of in the above terms with no order as to costs. "

4.The respondents have not disputed the fact that the issue is covered by the decision of the Hon'ble Supreme Court. However, the learned Additional Government Pleader pointed out that the petitioner did not agitate the matter and has challenged the assessment order passed in 2003, confirmed in Appeal, only in 2012.

5.However, it has to be pointed out that identical issue was decided by the Hon'ble Supreme Court, only on 24.11.2011. Therefore, on that ground, the petitioner, who is a member of the Association which moved the Hon'ble Supreme Court, cannot be non-suited.

6.Thus, following the decision of the Hon'ble Supreme Court, the Writ Petitions are allowed, impugned demands are quashed and the matter is remanded to the Assessing Authority for redoing the assessment in terms of the direction issued by the Hon'ble Supreme Court. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
Coimbatore 18.

2.The Appellate Assistant Commissioner (CT)
Erode.

3.The Commercial Tax Officer
Periya Agraharam Circle
Erode.

1 cc to Special Government Pleader(T), sr.49279
1 cc to Mr.S.Sivakumar, Advocate, sr.49274

W.P.No.17569 to 17581 of 2012

mpi co
kra 16.09.2016