IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29267 of 2016

M/s.Padmavathi Industries,
Rep. By its Proprietor - C.Hiralal Jain,
S.F.No.11/1A, Alangayam Cross Road,
(Near Perumalpet),
Vaniyambadi - 635 751.
Vellore District. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Vaniyambadi,
Vellore District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records on the file of the respondent in its impugned order passed in TIN:33876365238/2016-2017, dated 15.07.2016, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader(T)

ORDER

Heard Ms.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T), who accepts notice for the respondent, and with their consent, the writ petition itself is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TN VAT Act). In this writ petition, the petitioner has challenged the order of assessment dated 15.07.2016 for the assessment year 2016-2017.

3. The respondent issued a pre-assessment notice stating that the petitioner has purchased the Tamarind Seeds, but has not paid purchase tax. Therefore, the petitioner was requested to pay the purchase tax on the turnover mentioned in the notice, otherwise penalty would be levied under Section 27 (4)(i) of the TNVAT Act, 2006. The petitioner filed their objections stating that the nature of business is purchasing Tamarind seeds from local agriculturists against bought notes, removing the outer skin and selling the tamarind seed (white) to their customers. Therefore, the petitioner contended that the process does not amount to manufacture. The petitioner has also relied upon the following decisions of this Court:

i. The State of Tamil Nadu v. Subbaraj and Co. [47 STC 30 (MAD)]

ii. The State of Tamil Nadu v. Bharat Dairy Farm [1991 81 STC 332]

iii.K.Shahul Hameed v. State of Tamil Nadu [1992 84 STC 466 (Mad)]

iv.State of Tamil Nadu v. O.P.Aliyar [1992 97 STC 339 (Mad)]

v. State of Tamil Nadu v. Annai Industries [1994 94 STC (Mad)]

4. The respondent, while considering the petitioner's objections, extracted the objections verbatim and in the last paragraph of the impugned order, the respondent has stated that the petitioner took adjustment and therefore, their reply is not acceptable.

5. In my view, the respondent should have examined as to whether the activity done by the petitioner would amount to manufacture. Without doing so, the respondent could not have completed the assessment. This being an error which is apparent on the face of the record, the impugned order has to be necessarily interfered with. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner and if necessary, the respondent can inspect their industry to assess the nature of the activities done by them and thereafter redo the assessment in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkm

To

The Assistant Commissioner (CT),
Vaniyambadi,
Vellore District.

+1cc to Ms.R.Hemalatha, Advocate, S.R.No.48606
+1cc to the Special Government Pleader(T), S.R.No.48509

W.P.No.29267 of 2016

AD(CO)
CA(12/09/2016)