IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.09.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.12695 of 2004 &
W.M.P.No.14811 of 2004

Tv.Karishma Leatherware
Chennai. .. Petitioner

Vs

1.The Commercial Tax Officer
Velacherry Assessment Circle
Chennai 61.

2.The Appellate Assistant Commissioner (CT)(V),
Kancheepuram. .. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records on the files of the 1st respondent in TNGST 171604/02-03 dated 12.1.2004 and quash the same as being invalid, illegal and unjustified on facts and law.

For petitioner .. Mr.R.Senniappan

For Respondents .. Mr.S.Kanmani Annamalai
Addl.Govt.Pleader

O R D E R

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

2.In this Writ Petition, the petitioner challenges the Order of Assessment dated 12.01.2004, passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959, [TNGST Act].

3.The petitioner's case is that inspite of two assessment orders by the Appellate Assistant Commissioner and an earlier order passed by the Tamil Nadu Taxation Special Tribunal, the first respondent has completed the assessment, without verification of the records.

4.The Order of Assessment for the year 1992-93 was revised by an order dated 17.03.1997, as against which, the petitioner preferred an Appeal before the Appellate Assistant Commissioner, who by an order dated 19.01.1998, allowed the Appeal, set aside the revised assessment order and remanded the matter to the Assessing Officer for fresh disposal, after verifying the bill of lading and subject to its acceptability and also to verify the claim that the goods were despatched with delivery challen and invoice and then take a decision in the matter.

5.The Assessing Officer completed the assessment by an order dated 31.05.1999. Once again, the petitioner complaining that the direction issued by the Appellate Commissioner having not complied with, filed further appeal before the Appellate Assistant Commissioner, who by an order dated 21.10.1999, once again remanded the matter with the very same directions. Thereafter, the order was passed by the Assessing Officer, on 11.10.2002, and aggrieved over the said order, the petitioner filed an Appeal to the Taxation Special Tribunal, stating that the order of remand passed earlier by the Appellate Assistant Commissioner was not complied with. The Tribunal by an order dated 11.02.2003, allowed the Original petition, set aside the assessment order dated 11.10.2002, and remanded the matter for fresh consideration. It is thereafter, the show cause notice was issued by the Assessing Officer on 6.10.2003. The petitioner submitted their objections and the respondent has passed the impugned order.

6.The learned counsel for the petitioner submitted that inspite of three orders of remand, the authority has not verified the bill of lading and other documents produced by the petitioner. Therefore, it is submitted that the impugned assessment order has to be set aside.

7.In the earlier orders of remand, the Assessing Officer was directed to take note of the following two issues:

i) that he should verify the bill of lading and

ii) that he should also verify whether the goods were despatched with delivery challans and then the invoices were made out.

It has to be seen as to whether the authority has looked into those documents. As could be seen from the show cause notice issued to the petitioner dated 25.11.2003, that the authority has verified the documents and found certain interleniations (tampering). Therefore, opportunity was given to explain those discrepancies. The petitioner submitted their objections on 20.12.2003 and the respondent after affording an opportunity of personal hearing, clearly found that the export documents have been tampered and there was a over writing. The authority found that the delivery challan original buyers name has been scored out and the petitioner's name has been inserted and in respect of the one of the delivery challan bearing No.986, the date has been altered from 22.7.1992 to 09.7.1992. Thus, the authority concluded that the defects in the documents clearly show that the delivery notes were raised prior to invoice and cannot be accepted as true and correct and therefore, disallowed the claim for exemption.

8.Even before this Court, the petitioner has no explanation for the corrections effected in those documents. Further, from the para-wise instructions given by the Assessing Officer, it is seen that inspite of sufficient opportunity granted by the Assessing Officer, after remand, the dealer could not explain the transactions. Thus, in the absence of proper documents, there is no error in the order passed by the Assessing Officer.

9.Accordingly, the Writ Petition fails and is dismissed. However, dismissal of this Writ Petition will not prevent the petitioner from filing an Appeal, if they have got any proper documents from the Customs Department, evidencing the export. If such an Appeal is filed, the period during the Writ Petition was pending before this Court i.e. from 29.04.2004 to till the date of receipt of a copy of this order, shall be excluded, for the purpose of computing limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer
Velacherry Assessment Circle
Chennai 61.

2.The Appellate Assistant Commissioner (CT)(V),
Kancheepuram.

+1 cc to Mr.R.Senniappan,advocate,sr.50398

+1 cc to Spl.govt.Pleader,sr.50456.

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