

In the High Court of Judicature at Madras

Dated : 30.09.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

WP.Nos.34610 & 34611 of 2016
WMP.Nos. 29803 & 29804 of 2016

Solvents and Chemicals
Represented by its Managing Partner
V.M. Jalaludeen

...Petitioner in
both WPs

Vs

The Assistant Commissioner (CT)
R.S. Puram (East) Circle,
Coimbatore - 641 018.

...Respondent in
both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent herein in CST. No. 552864/2002-03 and CST. No. 552864/2003-04, both dated 16.09.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.K.Venkatesh,
Government Advocate.

COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate who accepts notice for the respondent, in both the writ petitions. By consent of the learned counsel for both sides, the writ petitions are taken up for final disposal.

2. The petitioner is a partnership firm, having its head office at Kochi, Kerala State and registered dealer in chemicals, both under the Tamil Nadu General Sales Tax Act, 1959 as well as the Central Sales Tax Act, 1956 (hereinafter will be referred to as "the CST Act"). In these writ petitions, the petitioner has challenged the revised assessment orders under the CST Act, for the years 2002-03 and 2003-04.

3. This is the second time the petitioner is before this Court agitating the same issue. Earlier, the petitioner

filed writ petitions in WP.Nos.13328 to 13331 of 2005, challenging the orders of assessment, under the CST Act and the TNGST Act for the same years.

4. The basic contention raised in the earlier writ petitions was that, they are entitled for exemption under Section 6(2) of the CST Act, as the sale was effected during the movement of goods. The Assessing Officer sought to negative the claim by stating that there was no sale during the movement. The contention was that even on that footing, the sale will not be taxable in the State of Tamil Nadu either on application of Section 9(1) or on Section 4 of the CST Act.

5. This being the basis of the petitioner's case, elaborate arguments were advanced by the learned Senior Counsel for the petitioner before this Court, which was suitably defended by the learned Additional Government Pleader. The Court took into consideration the submissions made on either side and disposed of the writ petitions, by common order dated 18.12.2015, by setting aside the assessment orders and remanded the matter back to the respondents to pass fresh assessments. The petitioner was permitted to produce all required documents within a stipulated time and there was a direction to consider the same and necessary orders to be passed, after affording an opportunity of personal hearing to the petitioner.

6. This Court, while disposing of the writ petitions, recorded the submissions of the learned Additional Government Pleader, that the petitioner can be afforded one more opportunity to submit documentary evidence to substantiate their case and on such evidence being filed, the same would be considered and appropriate orders would be passed. Therefore, what the respondents were expected to do in terms of the direction issued in the earlier writ petitions was to re-do the assessment afresh, for which purpose, the petitioner was granted opportunity to produce documents and the Assessing Officer was required to consider the documents, afford an opportunity of personal hearing and examine the petitioner's case.

7. Firstly it is to be noted that, admittedly, no personal hearing was granted. Therefore to that extent the respondents have violated the directions issued in the earlier writ petitions. Secondly, the objection given by the petitioner dated 20.04.2016 to the notice dated 08.03.2016 has not even been referred to in the impugned order. This is a grave error committed by the Assessing Officer. The third and the most serious mistake committed by the Assessing Officer is that he had mis-read and mis-quoted the orders passed in the earlier writ petitions, dated 18.12.2015.

8. In the impugned order, the respondent has extracted certain portions of the order passed in the earlier writ petitions; to be precise, few sentences in paragraph 2a, few sentences/portions in paragraph 4. Unfortunately, the Assessing Officer did not take note of the fact that the portions of the order, which have been extracted in the impugned assessment order, are not the findings rendered by this Court, but they are the arguments advanced by the petitioner. After extracting these findings, the Assessing Officer, without discussing the matter, proceeded to complete the assessment by stating that this Court has directed that the turn-over should be assessed under the TNGST Act. Thus, it is a clear case, where the respondent mis-read and mis-interrupted the order passed by this Court in the earlier writ petitions.

9. As pointed out earlier, the basic issue that the respondent should have considered is, whether the plea raised by the petitioner that they are entitled for exemption under Section 6(2) of the CST Act was justified. However, without considering that issue, the respondent has proceeded on a different footing, which is wholly untenable. The need for personal hearing has been reiterated by this Court in several decisions, some of which have been rendered, following the decisions of the Hon'ble Supreme Court. Therefore, the respondent could not have completed the assessment without affording an opportunity of personal hearing.

10. At this stage, it would be beneficial to refer to the judgment of the Hon'ble Division Bench of this Court in the case of SRC Projects Pvt. Ltd., vs. CCT [(2010)33 VST 333] wherein it was held as follows:

".... but in cases where dealer seeks for a personal hearing, such dealer should be afforded the same in all cases where the Commissioner proposes to record a finding, which is adverse to the dealer and such adverse order to the assessee can only be made after giving the assessee a hearing."

11. In the instant case, this Court, in the earlier writ petitions had specifically directed that an opportunity of personal hearing should be granted. Therefore, there is no justification on the part of the Assessing Officer to ignore such direction.

12. Hence, for the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded back to the respondent for fresh consideration and he shall specifically consider the plea raised by the petitioner with regard to their entitlement for exemption under Section 6 (2) of the CST Act, afford an opportunity of personal hearing

and pass a speaking order on merits and in accordance with law as expeditiously as possible.No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar()

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Sub Assistant Registrar

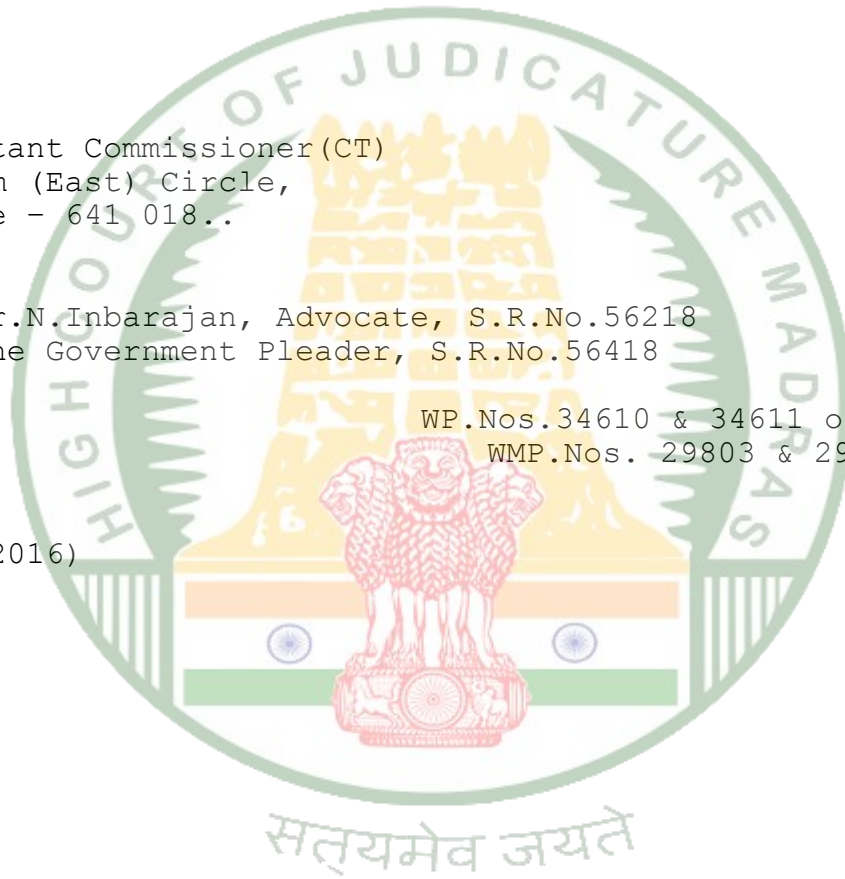
To

The Assistant Commissioner(CT)
R.S. Puram (East) Circle,
Coimbatore - 641 018..

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.56218
+1cc to the Government Pleader, S.R.No.56418

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