IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.33957 to 33959 &

33437 to 33439 of 2004

M/s S.Ponnaiyan & Co.
rep. by Mr.S.Ponnaiyan, Partner
Nagercoil. .. Petitioner in all WPs

Vs

1.The State of Tamil Nadu
rep. by Secretary
Commercial Taxes Department
Fort St.George, Chennai 9.

2.The Commissioner of Commercial Taxes
Second Floor, Ezhilagam
Chepauk, Chennai 5.

3.The Deputy Commercial Tax Officer
Tower Junction
Nagercoil.

4.The Deputy Commercial Tax Officer
Tuticorin Assessment Circle
Tuticorin.

5.The Appellate Assistant Commissioner (CT)
Tirunelveli. .. Respondents in all WPs

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records on the file of the third respondent in Roc.No.A4 624/99 RCO No.A4 1009/99, A4 37/02, A4 37/02(92-93), 37/02 (94-95), 37/02 (93-94) dated 30.09.2004, 2719/04, 2719/04, 2719/04 and quash the same as being without jurisdiction, authority of law and contrary to the direction of this Court in W.P.No.14802 to 14804 of 2004 dated 01.06.2004 and directing the first or second respondent as the case may be to issue order authorizing the jurisdiction of the assessing authority and thereafter proceed further in accordance with the procedure contemplated under the Tamil Nadu General Sales Tax Act, 1959, in so far as the assessment year 1993-94, 1994-95, 1992-93, 92-03, 94-95, 93-94 is concerned.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.R.Senniappan, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned additional Government Pleader appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, these Writ Petitions are taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the Tamil Nadu General Sales tax Act, 1959 (TNGST Act), has challenged the orders of assessment passed for the years 1993-94, 1994-95, 1992-93.

3.The matter had a checkered history and this is the second round of litigation before this Court. Earlier, the Assessing Officer finalised the assessment by orders dated 31.03.2000. As against which the petitioner preferred Appeals before the Appellate Assistant Commissioner (CT), Tirunelveli in Appeal Nos.394 to 396 of 2000. The Appeals were disposed of by an order dated 25.05.2001, by which the matter was remanded to the Assessing Officer to pass fresh orders denova.

4.The learned counsel for the petitioner submits that the only issue to be decided in this case is as to whether the foundation work of the Wind Mill was entitled for exemption in terms of Entry 46 (xi) of the third schedule to the TNGST Act. The Appellate Authority, while remanding the matter for denova consideration, pointed out that the technocart report from the competent person should be obtained by the Assessing Officer, to establish that foundation works of the Windmill are not connected to Wind Mill. However, the Assessing Officer while completing the assessment on remand, stated that the opinion of the competent Technocart's need not be obtained and overruled the same on the ground that the petitioner has produced all material evidence regarding the foundation work. Therefore, the petitioner has filed these Writ Petitions, stating that there is clear violation of the directions issued by the Appellate Authority.

5.On a perusal of the materials placed on record, it is evidently clear that the observations made by the Assessing Officer in the assessment order to brush aside the direction issued by the Appellate Authority is incorrect and erroneous. Admittedly, neither the dealer nor the Assessing Officer has expertise to decide as to whether the foundation work of a Wind Mill is a part of the Wind Mill and entitled for exemption. Therefore, the Assessing Officer ought to have obtained a report from the competent technical person and then completed the assessment. Having not done so, this Court is inclined to interfere with the impugned orders.

6.Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the second respondent, with a direction to obtain a report from the technically competent person, preferably from a State Government organisation to decide as to whether the foundation work of the Wind Mill is entitled to the exemption under Entry 46 (xi) of the third schedule to TNGST Act and are exempted from tax by section 8 of the TNGST Act. It is needless to mention that the second respondent before completing the assessment, shall afford an opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rpa

To

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rep. by Secretary
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3.The Deputy Commercial Tax Officer
Tower Junction Nagercoil.

4.The Deputy Commercial Tax Officer
Tuticorin Assessment Circle Tuticorin.

5.The Appellate Assistant Commissioner (CT), Tirunelveli.

1 cc to M/s.R.Senniappan, Advocate, sr.39079
1 cc to The Special Government Pleader, (T), sr.39297, 39170

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kra 27.07.2016