IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34282 to 34285 of 2004
&
W.P.M.P.Nos.41411, 41413, 41415 and 41409 of 2004

M/s.Mettupalayam Mills & General Traders (P) Ltd.,
2, Railway Station Road
Mettupalayam .. Petitioner in all WPs

Vs.

The Commercial Tax Officer
Mettupalayam .. Respondent 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 of the respondent herein in TNGST 2041067/1995-96, TNGST 2041067/1996-97, TNGST 2041067/1997-98 and TNGST 2041067/1998-99 respectively, quash the order dated 20.09.2004 passed therein and further direct the respondent to grant deduction in respect of the purchase turnover relating to chemicals in accordance with the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore in CTA 222/02 and etc., dated 23.09.2002.

For Petitioner : Mr.P.V.Sudhakar

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.P.V.Sudhakar, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent.

2. The petitioner, who is a registered dealer under the Tamil Nadu General Sales Tax Act, has filed this writ petition challenging the Orders of Assessment for the years 1995-96, 1996-97, 1997-98 and 1998-99. Though several grounds have been raised by the petitioner in the affidavit filed in support of the writ petitions, learned counsel for the petitioner, on instructions, submitted that the petitioner may be permitted to

urge only one ground where the petitioner made a claim of exemption under Section 3-B (2)(e) of the Tamil Nadu General Sales Tax Act, 1959, as per which all amounts towards "labour charges and other like charges" not involving any transfer of property in goods, actually incurred in connection with the execution of works contract are eligible for deduction from the total turnover of the dealer in order to arrive at the taxable turnover under Section 3-B of the Act.

3. Since this issue though raised by the petitioner in his objection and referred to by the Assessing Officer in the impugned orders of assessment, he has not specifically dealt with the issue. Therefore, only to consider the said issue, this Court is inclined to send back the matter to the respondent for fresh consideration. However, for this reason, this Court is not inclined to set aside the impugned Assessment Orders, but would direct the petitioner to treat the impugned proceedings as a show-cause notice and give his objection once again. It is made clear that apart from the above referred legal point referring to Section 3-B (2)(e) of the Tamil Nadu General Sales Tax Act, 1959, the petitioner would not be entitled to canvass any other point. Therefore, the respondent has to consider as to whether the contention raised by the petitioner that deemed sale concept or consideration of 50 : 50 ratio could be made applicable to the petitioner's case. The petitioner is directed to submit their objections along with the copy of this order within three weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to decide the said issue alone.

The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

gpa

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government
   Commercial Taxes and Religious
   Endowments Department
   Fort St. George, Chennai -9

2. The Deputy Commercial Tax Officer
Periya Agraharam Assessment Circle
TNHB Complex, Erode -11

+1 cc to Mr.Chandran Karuppiah, Advocate SR 36801

ca(co)
prk19/7

W.P.Nos.34282 to 34285 of 2004 &
W.P.M.P.No.40035 of 2004