IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.34386 of 2004

Evergreen Plastic Industries,
No.108, Sydenhams Road,
Chennai - 600 003. .. Petitioner

Vs

1.The Commercial Tax Officer,
Egmore I Assessment Circle,
Chennai - 600 031.

2.The Commercial Tax Officer,
Karur South,
Karur. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent herein in TNGST No.0441744/2002-2003 dated 30.07.2004 and quash the same.

For Petitioner : Mr.N.Prasad

For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondents and with their consent, the writ petition is taken up for disposal.

The petitioner is a registered dealer under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and in this writ petition, the petitioner has challenged the assessment order under the TNGST Act for the year 2002-03. Three issues arises for consideration in the instant case, namely, (1) Tax payable on the consignment sale to the agents, (2) stock variation and (3) sales returns.

2.With regard to the issues pertaining to stock variation and sales returns, after elaborately hearing the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Taxes) appearing for the respondents, what the petitioner seeks to demonstrate before this Court are serious disputed questions of fact. Hence, the appropriate remedy for the petitioner is to avail the appellate remedy provided under the Act with regard to these issues. Therefore the petitioner is directed to file an appeal before the Appellate Authority and the petitioner is granted 30 days time from the date of receipt of a copy of this order to file an appeal before the Appellate Authority and if the same is done, the Appellate Authority shall entertain the appeal without reference to limitation.

3.The only remaining issue is with regard to tax payable on the consignment sale to agents, the Assessing Officer has rejected the same stating that the dealers have not maintained any records for the consignment sale said to have been effected nor filed any details to the Department as required under Rule 26(6)(a) and (b) of the TNGST Rules, 1959. However, this finding rendered by the Assessing Officer appears to be contrary to the stand taken by the dealer in his objections to the pre-revision notice, wherein the petitioner has taken the following stand:

> "As regards Item 2 and 3 we had already filed all the relevant xerox copies of documents in proof of goods return claim at the time of check of accounts. However we are once again filing the set of xerox copies for your perusal and we may be given a personal hearing to prove our claim.
>
> As regard Item 4, 5 & 6 you have alleged suppression on the basis of certain records recovered under D7 slip at the time of Inspection. On going through the setn of D7 xerox copies (160 slips) we understand that all these papers are pertaining the transactions which finds place in our books of accounts. We request that we may be given a personal hearing to appear before you to explain the correctness of the transaction to the best of your satisfaction. There is no suppression of sales pertaining to the slips recovered and the same will be proved with the books of accounts."

4.The above stand taken by the petitioner has not been denied, disbelieved or dealt with in the impugned order. That apart, the petitioner has produced the certificate of tax payment from all the agents. Apart from that, the petitioner has stated that the second respondent, who is the Assessing Officer of the agents has called for their respective books of accounts for the relevant year along with the statement recording the consignment, purchase and sale and when the matter was being examined, the first respondent has completed the petitioner's assessment by efflux of time. As of now the assessment would have been finalized in respect of those consignment agents. Therefore, there could be no difficulty for the petitioner to produce the necessary records from the consignment agents to establish their stand. Therefore, the finding regarding the tax payable on the consignment sale to the agents requires to be set aside and the matter to be remanded for fresh consideration. Accordingly the finding rendered by the first respondent in the impugned assessment order with regard to the tax consignment sales is set aside and the matter is remanded for fresh consideration.

5.In the light of the above, the writ petition is partly allowed and the impugned order is quashed in so far as it relates to the finding rendered with regard to consignment sales and the first respondent is directed to afford an opportunity of personal hearing to the petitioner, peruse the records that the petitioner may produce and proceed to finalize the assessment afresh in accordance with law. The petitioner is granted 30 days time from the date of receipt of a copy of this order to file an appeal before the Appellate Authority and if the same is done, the Appellate Authority shall entertain the appeal without reference to limitation. It is needless to state that the penalty which has been levied with regard to the consignment sales also stand set aside and in so far as the penalty which has been arising out of sales returns and stock variation, the petitioner is at liberty to file an appeal against such finding. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Commercial Tax Officer,
Egmore I Assessment Circle,
Chennai - 600 031.

2.The Commercial Tax Officer,
Karur South,
Karur.

1 cc to Mr.N.Inbarajan, Advocate, sr.41029
1 cc to Special Government Pleader, sr.41092

W.P.No.34386 of 2004

mg co
kra 03.08.2016