IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34881 of 2004
&
W.P.M.P.Nos.42079 and 42080 of 2004

The Kerala Cardamom Processing and
Marketing Company Limited
Rep. by its Manager - Cardamom Auction
A.Srinivasan
Spice House, Thekkady
Kumili, Kerala State .. Petitioner

Vs.

1. The State of Tamil Nadu
Rep by the Secretary to Government
Commercial Tax Department
Secretariat, Fort St. George
Chennai - 600 009

2. The Deputy Commissioner
(Commercial Taxes - Enforcement)
Commercial Taxes Buildings
Dr.S.V.K.S.Thangaraj Salai
Post Box No.32, Madurai

3.The Commercial Tax Officer (FAC)
Office of the Commercial Tax Officer
Bodinayakanur, Theni District .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records in respect of the Letter No.15812/D2/2002-17 dated 13.08.2004 and quash the same as illegal, unconstitutional and consequently direct the 1st respondent to review its order dated 13.08.2004 and waive the sale tax liability upon the petitioner under Section 17(4) of the Tamilnadu General Sales Tax Act for the auctions effected by the petitioner for the period 11.04.2000 to 19.04.2000.

For Petitioner : Mr.R.Parthasarathy
For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

O R D E R

Heard Mr.R.Parthasarathy, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader for the respondents.

2. The petitioner is the Kerala Cardamom Processing and Marketing Company Limited and they have filed this writ petition challenging the order passed by the first respondent dated 13.08.2004 in and by which the petitioner's request for waiver of Sales Tax liability under Section 17(4) of the Tamilnadu General Sales Tax Act, 1959 was rejected for the auctions effected by the petitioner for the period 11.04.2000 to 19.04.2000. Earlier the petitioner came before this Court by filing W.P.No.14094 of 2003. In the said writ petition the petitioner challenged an order passed by the first respondent dated 24.12.2001 by which the petitioner was informed that their request for waiver of taxability on Cardamom for the period from 11.04.2000 and 26.04.2000 is not feasible of acceptance. The Court, after having considered the case of the petitioner and after hearing the learned Government Advocate, disposed of the writ petition with certain observations and directions. At this stage it will be beneficial to refer to the operative portion of the order and direction dated 19.09.2003, which reads as follows:

> "3. I have heard the learned Government Advocate and also perused the material on record. Though the argument of the learned counsel cannot be considered as a reason in favour of the petitioner so as to grant the relief as sought for, but the order which is impugned in the petition is an order which states no reason whatsoever for negativing the request of the petitioner. The Government is vested with power under the provisions of the Act to issue notification to make exemption or reduction in the rate in respect of any tax payable under this Act on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales by successive dealers; or by any specified class of persons, in regard to the whole or any part of their turnover; or on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.
>
> 4.When such powers are vested with the Government to exercise its suo motu, when a representation has been made by the dealers with certain minutes of meeting conducted by the Deputy Commissioner of Range concerned, the Government would have passed an order an order with informed reasons. But the order of the

Government which is impugned in the writ petition is bereft of any reasons and just negatived request of the petitioner as not feasible for acceptance. The learned Government Advocate wants to sustain the order by saying so many reasons. It is well settled that the order which is not in issue before the Court has to be decided with the reasons stated therein only. No reason can be supplemented by filing an affidavit, counter affidavit or in any other form. Hence, I am of the view that the order of the Government dated 24.12.2001 is deserves to be set aside and the same is set aside. The matter is remitted back to the first respondent to consider and pass appropriate speaking orders.

3. The case of the petitioner itself is that till 10.04.2000, Cardamom was taxable at the point of last purchase and by virtue of G.O.Ms.No.68, Commercial Taxes dated 11.04.2000, incidence of tax liability was shifted to:- a) at the point of first purchase within the State and b) at the point of first sale not falling under clause (a) alone i.e., the point of first purchase. Thus the incidence of tax liability had been shifted as stated above. This Government order was passed on 11.04.2000, but was made available to the petitioner only on 26.04.2000, through the Commercial Tax Officer (FAC), Bodinayakanur, Theni District and after the said date i.e., 26.04.2000, the petitioner has been remitting the tax in accordance with the Government Order. The petitioner has sought for waiver only for the period from 11.04.2000 to 25.04.2000 as there was no liability of tax since the incidence of the tax was on the last purchase in Tamil Nadu. Though such a contention was raised, since the same was not considered, the Court set aside the same and remitted the matter for fresh consideration. Yet the first respondent, without proper application, has rejected the petitioner's request by a cryptic and non-speaking order. The petitioner, to substantiate their contention, had referred to the minutes of the meeting held by the Deputy Commissioner of Commercial Taxes at Madurai, who has also made certain recommendations to the Government and it appears that the Deputy Commissioner of Commercial Tax assured in the meeting to recommend the case of the petitioner for waiver of tax for the said period. That apart, elaborate representation was also made by the petitioner. Without considering all these aspects, the respondent has rejected the petitioner's representation in a most arbitrary manner. In fact, the manner in which the order has been passed would amount to disobedience of the direction issued by this Court in the earlier writ petition.

In the light of the above, the writ petition is allowed and the impugned order dated 13.08.2003 is quashed and the matter is remanded to the first respondent for fresh consideration. The

first respondent is directed to call for necessary files from the Office of the Deputy Commissioner, afford an opportunity of personal hearing to the petitioner and thereafter, pass a speaking order on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. 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
Commercial Tax Department
Secretariat, Fort St. George
Chennai - 600 009

2. The Deputy Commissioner
(Commercial Taxes - Enforcement)
Commercial Taxes Buildings
Dr.S.V.K.S.Thangaraj Salai
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skv(co)
prk19/7

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