In the High Court of Judicature at Madras

Dated : 28.9.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.25248 to 25253 of 2003
and WPMP.Nos.7382 to 7387 of 2004

M/s.S.S.R.Mills, Chennai-1. ...Petitioner in WP.25248, 25249, 25251/2003

M/s. Seema Steel Industries
No.7, Muthumari Street
Chennai-1 ...Petitioner in W.P.25250, 25252, 25253/03

Vs

1.The State of Tamil Nadu, rep.by
the Deputy Commissioner (CT),
North Division, Chennai-6.

2.The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench), Chennai
rep.by its Secretary, Chennai-104. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the second respondent in its proceedings in S.T.A.Nos.1044, 1269, 1045, 945, 948 and 952 of 2000 and quash the orders therein dated 10.1.2003 and further direct that exemption be granted under Section 6A of the Central Sales Tax Act, 1956 on the turnover of stock transfers effected by the petitioners to their consignment sales agents in the transferee States and delete the penalty sustained under Section 12(5)(iii) of the Tamil Nadu General Sales Tax Act, 1959 read with 9(2A) of the Central Sales Tax Act, 1956.

For Petitioners : Mr.R.L.Ramani, SC for
Mr.B.Ravindran

For Respondent-1 : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Heard both.

2. In the light of the decision of the Honourable Supreme Court in the case of M/s.Ashok Leyland Ltd. Vs. State of Tamil Nadu [reported in (2004) 134 STC 473], the learned counsel for the parties submitted that the writ petitions themselves may be disposed of.

3. The petitioners suffered an order of assessment at the hands of the Assessing Officer. The petitioners filed appeals against the assessment orders and succeeded before the First Appellate Authority. However, the State preferred second appeals before the second respondent, which allowed the appeals filed by the State.

4. The contention raised by the learned Senior Counsel for the petitioners are two fold. Firstly, on the date, when the appeals filed by the State were allowed by the Tribunal, the judgment of the Hon'ble Supreme Court reported in (2004) 134 STC 473 (cited supra), was not available. The second contention is that though the petitioners had filed cross objections, the same were not considered by the Tribunal.

5. On a perusal of the impugned orders passed by the Tribunal, it is evidently clear that the cross objections have not been dealt with in the proper manner. That apart, nature of the transaction involved was the subject matter of consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court, while considering the same, made certain observations as to the nature of enquiry to be done by the Assessing Officer. At this juncture, the relevant paragraph is quoted hereinbelow :

> "The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the Assessing Authority."

6. Admittedly, such enquiry was not conducted in the instant case. But, nevertheless, the decision rendered by the Hon'ble Supreme Court in (2004) 134 STC 473 (cited supra) came subsequent to the order of the Tribunal. But, without conducting such an enquiry, the Assessing Officer could not have taken a decision against the interest of the assessees. Therefore, this is a fit case where the matters

should be remanded back to the Tribunal to consider the case of the petitioners in the light of the decision of the Hon'ble Supreme Court in (2004) 134 STC 473 (cited supra) and also to consider the points raised by the petitioners in the cross objections.

7. For all the above reasons and applying the decision of the Hon'ble Supreme Court in (2004) 134 STC 473 (cited supra), the writ petitions are allowed and the impugned orders are set aside. The matters are remitted back to the second respondent to consider the case of the petitioners afresh i.e after hearing the Revenue as well as the petitioners both on the Revenue's appeals as well as cross objections by applying the said decision and take a fresh decision on merits and in accordance with law. No costs. Consequently, the above WPMPs are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Deputy Commissioner (CT),
Tamil nadu North Division, Chennai-6.

2.The Secretary, Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Chennai-104.

1 cc to M/s. Chandran Karuppiah, Advocate, Sr. 55654
1 cc t Spl. Government Pleader (S), Sr. 56061

WP.Nos.25248 to 25253 of 2003&
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