BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 07.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.8708 of 2013
and
M.P(MD)No.1 of 2013

TVL.Nataraj Oil Mills (P) Ltd.,
Represented by its Managing Director,
K.S.R.Natarajan .. Petitioner

.Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Govt.,
Department of Commercial Taxes and
Registration Department,
Fort St. George,
Chennai 600 009.

2.The Commercial Tax Officer,
Melur Assessment Circle,
Melur, Madurai - District. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Assessment order passed by the 2^{nd} Respondent dated 29.04.2013, received by the petitioner on 13.05.2013 in TNGST 4940751/2002-2003 and quash the same and to direct the 2^{nd} respondent to afford an opportunity of being heard to the petitioner.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.K.Guru
Additional Government Pleader

<u>O R D E R</u>

The Petitioner herein is Nataraj Oil Mills Private Limited, represented by its Managing Director for the issuance of Certiorarified Mandamus, to call for the records relating to the Assessment order passed by the 2^{nd} Respondent dated 29.04.2013, received by the petitioner on 13.05.2013 in TNGST 4940751/2002-2003 and quash the same and to direct the 2^{nd} respondent to afford an opportunity of being heard to the petitioner.

2.The petitioner is engaged in the manufacture of gingili oil and selling the resultant products of oil and oil cakes directly and through Commission Agents during 2002-2003. The agency is entered into agreement with the agents that will fetch the gross commission of 1% on a selling price. It was stipulated therein that the agency shall collect sales tax at the rate specified under the Tamil Nadu General Sales Tax Act and to remit the same to the appropriate authority.

3.It is the case of the petitioner is that he has reported a total and taxable turnover of Rs.11,95,84,794/- and Rs.2,91,67,695/- and had paid tax through monthly returns at the office of DCTO Melur. The petitioner submits that the respondent has issued the present notice dated 18.01.2007 proposing assessment on many items such as omission to account for alleged purchase of Palm oil and had also proposed to levy tax on the second sales of used car and has also attempted to levy tax on the packing materials of tin Under Section 7-A, alleging such purchases were made from unregistered dealers.

4.The further case of the petitioner is that he has objection to the proposed levy of Additional Sales Tax, which is proposed illegally and disregarding the facts, law and particularly against the provisions of the TNGST Act, by defining the 'Taxable Turnover' and also against the Rule 6(h) of the Rules which specifies that the turnover of sales or purchases made by the dealer through his agent, in respect of which tax has been paid by the agents. However, that the additional tax is leviable when the dealer had made local sales of taxable goods exceeding Rs.10 crores only. But the petitioner's transaction had reached only Rs.2.92 crores and therefore in ordinary course it is not liable to pay Additional Sales Tax as per the provision of Section 2(1)(aa) of the TNAST Act.

5.The petitioner earlier filed a writ petition challenging the notice dated 08.06.2007, in W.P.No.1045 of 2007 before this Court and on 14.02.2013, the above writ petition was disposed of with a direction to file objection to the notice dated 08.06.2007. Subsequently, a detailed reply was filed mainly raising the following contentions:-

1. The Assessing Officer had given exemption on the sales of Oil and Oil Cakes made through Agents for Rs.7,34,13,781/-.

2. Just to pull up the turnover above Rs.10 Crores, the exempted turnover of Rs.7,34,13,781/- was added with the Taxable Turnover, for the purpose to levy A.S.T.

3. They had also effected consignment sales within the state to their Agent Tvl. Anjali Foods, Madurai. Their agent on their sales, used to pay the Sales Tax themselves.

4. Accordingly to Rule 6 of TNGST Rules 1959, in determining the taxable turnover, the amount shall be deducted from the total turnover of a dealer.

5. Though Rule 6(h) of TNGST Rules specifically provides that turnover relating to sales of which tax has been paid by the Agent shall be deducted from total turnover to arrive @ taxable turnover, these Rules were not followed.

6. The Explanation-I to Sec.2(1)(aa) of TNAST Act 1970, is quite differently to the definition provided in Sec.2(p) of the Principal TNGST Act 1959 - The explanation of Sec-2(1)(aa) of TNAST Act 1970 is unlawful.

7. It is implied that while the turnover of the Agent, who had paid tax, is liable to be deducted under Rule 6(h) of TNGST Rules, and the turnover of the Agent who had not paid tax are only liable of levy of tax under AST Act.

8. By Sec 2(1)(b) of the AST Act, all the provisions of TNGST Act are made applicable to Addl. Tax Act.

9. The following cases are related to the assessment.

10. As per Sec 2(1)(b) of TNAST Act 1970, the provisions of the said Act shall apply in relation to the Additional Tax payable under clause (aa). Though the provisions shall be applied in general the main explanation, as provided U/s. 2(1) (aa) of TNAST Act 1970, should be invariably be followed without any deviation.

11. All the cases referred to in this pare does not relate to this specific Additional Tax case.

12. In as much as 100% Additional Tax was NOT paid by the dealers, Penalty is leviable.

6.Further, it is the case of the petitioner that while the basic Act has defined the taxable turnover which is liable to pay tax, the explanation of AST Act, 1970 defines the exempted agency sales of the Principal, which is not liable to tax as that of the taxable turnover of the Principal/Dealer. When the taxability of the additional tax is based mainly on the taxable turnover, the arbitrary and contradictory explanation cannot be a justification for levy of the AST on the agency sale for which the agent had paid tax. The petitioner has further pointed out that the turnover on which tax paid by the Commission Agents, on behalf of Principal is to be excluded in computing gross turnover of Principal. Therefore, according to the petitioner the impugned assessment order is against law and the same is liable to be quashed by affording an opportunity of hearing.

7.Per contra the learned Additional Government Pleader contested that though personal hearing was afforded to the petitioner, it was not properly responded by him. Further, the Assessing Authority passed the order of assessment after the careful scrutiny of the entire material related with the accounts of the petitioner and also after considering the relevant provisions of TNGST Rules. Further, he pointed out that the contentions raised by the petitioner was legally considered and mentioned that all the contentions raised by the dealers are nothing but after thoughts which deserve no consideration at all. As all the contentions are not convincing, they are all overlooked and the proposed assessment is confirmed under the TNGST Act 1959, and under the TNAST Act 1970, for 2002-03, as below:-

Total Turnover determined	:	Rs.12,50,31,551/-
Exempted Turnover determined	:	Rs.8,74,34,285/-
Taxable Turnover determined	:	Rs.3,75,97,266/-

Hence he prays for the dismissal of the writ petition.

8.I heard Mr.K.Vadivelu, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and perused all the records carefully.

9.It is the specific case of the petitioner is that the impugned assessment order dated.29.04.2013 is not only against law, but the same is contrary to the assessment notice dated 08.06.2007 in T.N.G.S.T4940751/2003-2004 of the D.C.T.O, wherein it is clearly stated that the exemption claimed on Rs.8,48,24,952/- towards sales of oil and oil cakes made through agents, details furnished were verified with reference to the accounts and found to be correct and allowed”. Hence the same is liable to be quashed.

10.It is the further submission of the learned Counsel for the petitioner that the impugned order is totally against Rule 6(h) of

T.N.G.S.T, Rule, 1959. Moreover, it is pointed out in the affidavit itself in the case of Sitaram Agarwal, it was held that the turnover on which tax paid by commission agent on behalf of Principal it is to be excluded in computing gross turnover of the Principal. Further, the Counsel for the petitioner has also pointed out that the Assessing Officer is failed to look into the provision as contemplated under Section 2(1)(aa) as its specifically defined that the taxable turnover of a Principal is included the taxable turnover of the Agent, therefore the impugned order of the Assessing Officer is to be quashed and the 2nd respondent is to be directed to provide opportunity of hearing the petitioner.

11.But it is shown that the total turnover was determined as Rs.12,50,31,551/-. For this calculation the Commercial Tax Officer has not given any explanation as to how the aforesaid amount is arrived. Apart from that there is no dispute that the total turnover is at a sum of Rs.8,74,34,285/- for the assessment year 2002-2003 from which exemption is given to a sum of Rs.8,74,34,285/-. So, the taxable turnover would be as mentioned in the proceedings at a sum of Rs.3,75,97,266/- when that be amount, the respondent cannot determined the total turnover at a sum of Rs.10,73,17,685/-.

12.Apart from that the reasoning adduced by the concerned authority without giving any findings to that effect, but simply mentioned that all the contentions raised by the dealers are nothing but after thoughts which deserve no consideration at all is unacceptable. Once, the authority has come to a conclusion that the representation of the petitioner is unacceptable, he should have given findings as per law and has to mention the provision of law by which he is not convinced. If the authority concerned has not given such findings, then the impugned order is bad in law and arbitrary.

13.Considering the totality of the case and the findings given by the concerned authority is unacceptable and not based on any legal provision, the impugned order dated 29.04.2013 is arbitrary and wrong and violative of Rules 2(1) (aa) and 6(h) of T.N.G.S.T, Rule, 1959 not in accordance with the T.N.G.S.T. Act and Rules. Hence this court has no option except to set-aside the impugned order, accordingly set aside.

14.In the result:

(a) the writ petition is allowed by setting aside the order in TNGST 4940751/2002-2003 dated 29.04.2013 passed by the 2nd respondent;

(b) the concerned authority is directed to pass appropriate orders on merits and in accordance with law, after giving opportunity to the petitioner;

(c) the respondents should complete the said exercise within a period of eight weeks from the date of receipt of copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St. George, Chennai 600 009.

2.The Commercial Tax Officer,
Melur Assessment Circle,
Melur, Madurai – District.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, SR.No.66535

+One cc to The Special Government Pleader, SR.No.67043

vs/skn
RL/5C/6P/KP/SAR1/29/6/2017

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M.P(MD)No.1 of 2013

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(1/2)