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

W.P.(MD).No.8709 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 2nd Respondent dated 29.04.2013, received by the petitioner on 13.05.2013 in TNGST 4940751/2003-2004 and quash the same and to direct the 2nd respondent to afford an opportunity of being heard to the petitioner.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.K.Guru
Additional Government Pleader

O R D E R

The Petitioner herein is TVL.Natraj Oil Mills Private Limited, represented by its Managing Director for the issuance of Certiorari Mandamus to call for the records relating to the assessment order passed by the 2nd respondent dated 29.04.2013 received by the petitioner on 13.05.2013 in T.N.G.S.T. 4940751/2003-2004 and direct the 2nd respondent to afford an opportunity of being heard the petitioner.

2.It is the case of the petitioner that he has reported a total and taxable turnover of Rs.11,59,45,374/- and Rs.3,10,60,422/- respectively to the year 2003-2004. the writ petitioner is selling oil directly and also through Commission Agents within the State of Tamil Nadu through Anjali Foods, Madurai and on the sales of which the relevant sales taxes are paid by the agents themselves. For the sales through agencies, the respective agent themselves paid the sales tax at their jurisdiction on a turnover of Rs.8,48,84,952/-. So, the petitioner had claimed exception on the commission sales made through agents. The further case of the petitioner is the D.C.T.O, Melur as Assessing Officer issued a pre assessment notice dated 08.06.2007 in T.N.G.S.T.4940751/2003-2004 had proposed to grant exemption on the commission sales made through agency for a sum of Rs.8,48,34,952/- on verification of claim by recording the following findings:

> *"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".*

3.The specific case of the petitioner is that though exemption was proposed to grant on the agencies sale of oil and oil cakes for Rs.8,48,34,952/-, now the said amount is added with the principal as taxable turnover required for levy of AST of exceed Rs. 10,00,00,000/- which is against the T.N.G.S.T Act and Rules. Further, the petitioner states that as per Rule 6 of T.N.G.S.T Rules, 1959 clause (h) would say that the turnover relating to agency sales of which tax has been paid by the agent shall be deducted from total turnover to at taxable turnover. Further, Section 2 (1) (aa) has defined as follows:

> *"The turnover of sales or purchase made by a dealer through his agent, in respect of which tax has been paid by the agent."*

4.However, without considering the same the impugned assessment notice was issued. Apart from that Sec2 (1) (aa) of the T.N. Additional sale Tax Act.1970 has defined as follows:

> "Taxable turnover for the purpose of this clause, in respect of a principle selling or buying goods through agent shall be the aggregate taxable turnover of all his agents relating to the sale are purchase of the good of such principle with in the Sate".

5.Further, 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.

6.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. Hence he prays for the dismissal of the writ petition.

7.I heard Mr.K.Vadivelu, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and carefully considered the materials available on records.

8.It is the specific case of the petitioner 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 states 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.

9.It is the further submission of the learned Counsel 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 U/S 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 2n respondent is to be directed to provide opportunity of hearing the petitioner.

10.When the impugned proceedings of the Commercial Tax Officer, Melur assessment circular is perused

Turnover as your Accounts:

1st sales of Oil and Oil Cake Rs. 2,71,63,382- @ 4%

1st sales of Gingelly seeds Rs.40,307- @ 4%

Resale of Oil and oil Cake u/s.3 (H) of the Act Rs.38,56,733- @ 1%

Taxable Turnover Rs.3,10,60,422/-

Exempted Turnover:

Consignment sales (on commission basis) of Oil

And Oil Cake effected through their agents

Tvl. Anjali Foods, Madurai

(in the state) Rs. 8,48,84,952- (Exempted)

Total Turnover Rs.11,59,45,374/-

The check of accounts revealed the following:

1. Exemption claimed on Rs.8,48,34,952/- towards of Oil and Oil Cakes made through agents. Details furnished were verified with reference to the accounts and found to be correct and allowed.

2. Their business premises were inspected by the Enforcement wing officers on 16.03.2005 to 17.03.2005 with the following results:

11.But it is shown that the total turnover was determined as Rs.22,84,09,643/-. 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.11,59,49,374/- for the assessment year 2003-2004 from which exemption is given to a sum of Rs.8,48,84,952/-. So, the taxable turnover would be as mentioned in the proceedings at a sum of Rs.3,10,60,422/- when that be amount, the respondent cannot determined the total turnover at a sum of Rs.22,84,09,643/-. Considering the totality of the case 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.

12.In the result:

(a) this writ petition is allowed by setting aside the order in T.N.G.S.T.4940751/2003-2004 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 a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/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.

+One cc to Mr.A.S.Mujibur Rahman, Advocate, SR.No.66535
vs/skn
RL/4C/5P/KP/SAR1/29/6/2017

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and
M.P(MD)No.1 of 2013
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(2/2)