IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

C O R A M

THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU

W.P.Nos.4831 and 4832 of 2017
and
WMP.No.5055 of 2017

FAMOUS SALES CORPORATION
Represented by its Proprietor
Dilip M. Shah
No.17, Strotten Muthiah Mudali street
Chennai - 600 079. ... Petitioner in both the petitions

Vs

Commercial Tax Officer
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai,
Chennai - 600 001. ... Respondent in both the petitions

Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the Respondent passed in CST/16993/2015-16 dated 31.12.2016 and CST/16993/2015-16 dated 07.02.2017 respectively and quash the same and further direct the Respondent to complete the assessment in accordance with the law .

For Petitioner ... Mr.N.Murali
For Respondent ... Mr.K.Venkatesh, GA

COMMON ORDER

The writ petition in W.P.No.4831 of 2017 is filed challenging the order of assessment dated 31.12.2016. The writ petition in WP.No.4832 of 2017 is filed challenging the revised assessment order dated 07.02.2017.

2. The petitioner in WP No.4831 of 2017 is an assessee under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter shortly referred as 'TNVAT Act') and a dealer in Kumkum. The respondent issued notice dated 09.08.2016 proposing to assess the turnover relating to inter-state sales of Rs.9,47,990/- @

14.5% by claiming that C-Declaration Forms were not furnished for such sales. According to the petitioner, they were in the process of collecting C-declaration forms and therefore they prayed time for submission of these forms before the respondent. However, such request was rejected by the respondent by passing the impugned order of assessment.

3. Thereafter, the petitioner collected C-declaration forms covering certain inter state sales representing a turnover of Rs.4,18,038/- and based on such filing of C Declaration Forms, a revised order of assessment came to be passed on 07.02.2017 by fixing the turnover of Rs.5,25,952/- as assessable to tax at the rate of 14.5% p.a. Such order is challenged in the other writ petition viz., WP.No.4832 of 2017.

4. The learned counsel for the petitioner submitted that the impugned order of assessment dated 31.12.2016 imposed tax on the petitioner at the rate of 14.5% in respect of exemption claimed under Section 8 (2-A) of the Central Sales Tax, Act, 1956 (hereinafter shortly referred to as 'CST Act') to the tune of Rs.8,76,420/- without there being any proposal while issuing notice to the petitioner on 09.08.2016. The learned counsel further pointed out that the said notice only proposed to determine the taxable turnover of Rs.9,47,990/- for the year 2015-16 @ 14.5% tax and there is no proposal in respect of the tax on exemption claimed under Section 8 (2-A) of the CST Act. Thus, the learned counsel contended that the very impugned order of assessment imposing tax on exemption claimed under Section 8 (2-A) of the CST Act is without notice to the petitioner and thus is in violation of the principles of natural justice.

5. The learned counsel for the respondent submitted that the assessment order was made only after considering the exemption claimed by the petitioner under section 8 (2-A) of the CST Act, apart from the taxable turnover as proposed in the notice and therefore, the said imposition of tax on exemption claimed under section 8 (2-A) of the CST Act need not be interfered with. But the learned counsel fairly admitted the fact that the proposal sent on 09.08.2016 does not deal with the proposal on exemption claimed under Section 8 (2-A) of the CST Act.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent - department.

7. The impugned order of assessment dated 31.12.2016 contains two heads of imposition of tax. One is in respect of the taxable turnover and another is in respect of the exemption claimed under Section 8 (2-A) of the CST Act. It is true that the notice sent to the petitioner on 09.08.2016 has not referred

to the proposal on exemption claimed under section 8 (2-A) of the CST Act. Further, the assessment order proceeded to impose tax on the said head also. Therefore, it is evident that the tax imposed on such head is without affording an opportunity of hearing to the petitioner. Thus, it is in violation of the principles of natural justice. On that ground alone, the said imposition of tax under the impugned assessment order dated 31.12.2016 is liable to be set aside for the purpose of remitting the matter to the Assessing Authority to issue a fresh proposal and thereafter pass an assessment order, after hearing the petitioner.

8. Accordingly, the impugned order of assessment dated 31.12.2016 insofar as imposing tax at 14.5% on exemption claimed under section 8 (2-A) of the CST Act is set aside and the matter is remitted back to the respondent for sending a proposal to the petitioner and thereafter to pass an assessment order afresh on merits and in accordance with law, after considering the objections raised by the petitioner. Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. W.P.No.4831 of 2017 is disposed of in the above terms. No costs.

9. The learned counsel for the petitioner submitted that since the matter is remitted back to the respondent for considering the tax liability afresh in respect of the exemption claimed under Section 8 (2-A) of the CST Act, he is not pressing the other Writ Petition viz., WP No.4832 of 2017 and is withdrawing the same with liberty to agitate the issue before appellate authority. He has also made an endorsement to that effect in the bundle. Since the petitioner is willing to agitate the matter before the Appellate Authority by filing an appeal in respect of non-submission of C-declaration Forms for the turnover of Rs.5,29,952/-, granting such liberty to the petitioner, the writ petition in WP.No.4832 of 2017 is dismissed as withdrawn. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

Commercial Tax Officer
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai,
Chennai - 600 001

+2 Ccs to Mr. N. Murali, Advocate sr 14498,14499
+1 CC to Spl. Govt. Pleader(Taxes), High Court, Madras sr 14695

CA(CO)
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