IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2017
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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.8962 of 2017
and
W.M.P.No9872 of 2017

Tvl. Vidhya Agencies,
rep. by its Proprietor, C. Dhanraj ...Petitioner

Vs.

1. The Assistant Commissioner (CT)
Salem Town (North) Circle, Salem.

2. The Appellate Deputy Commissioner (CT)
C. T. Building, Salem. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the second respondent, in A.P.No.TNGST -1/15, dated 25.11.2016, and to quash the same, as being contrary to the principle laid down by the Hon'ble Supreme Court in the judgement, reported in **(2008) 16 VST 181 (SC)** in the case of **(Steel Authority of India Vs. Sales Tax Officer, Rourkela- I Circle and others)** and further, to direct the second respondent to pass order afresh by discussing grounds in the Appeal Memorandum in Form X dated 28.12.2014, filed under Section 51 of the TNVAT Act, 2006.

For Petitioner : Mr.R. Senniappan

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R. Senniappan the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondents and carefully perused the material placed on record, including the parawise comments given by the Assistant Commissioner (CT), Salem Town (North) Circle, Salem, the first respondent herein to the Special Government Pleader (Taxes) High Court, Madras, dated 10.08.2017.

2. The petitioner has filed this Writ Petition, praying to quash order passed by the second respondent, in A.P.No.TNGST -1/15, dated 25.11.2016, and consequently, to direct the second respondent to pass orders afresh by discussing grounds in the Appeal Memorandum in Form X dated 28.12.2014, filed under Section 51 of the TNVAT Act, 2006.

3. The petitioner has impugned the order passed by the second respondent, viz., the Appellate Deputy Commissioner (CT) Salem, in A.P.No.TNGST -1/15, dated 25.11.2016. The said Appeal Petition was filed against the order of assessment passed by the first respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959, for the year 2003-04, dated 29.10.2014.

4. The petitioner's case is that, they have purchased superior kerosene oil (SKO) for high sale transactions. However, on account of a ban imposed by the Government on import of SKO, marketability of their product was affected, and they were compelled to sell SKO at a lesser price than the purchase price. According to the petitioner, they have produced certain records/documents to substantiate their claim before the first respondent/Assessing Officer. However, the Assessing Officer did not consider those documents. Nevertheless, the petitioner preferred an Appeal before the Appellate Authority/Second Respondent, and in the Memorandum of Grounds of Appeal, the petitioner has made certain factual submissions to substantiate their claim that they had, in fact, sold SKO at a price lesser than

what they have purchased. The Appellate Authority, by the impugned order has rejected the petitioner's claim on the ground that they have not produced documentary evidence that the market price of the SKO and the sale price are equal or lesser. The petitioner has stated that they have produced all the records before the Assessing Officer as well as Appellate Authority, but, both the Authorities failed to consider the same.

5. The Assessing Officer, in his parawise comments, has specifically stated that the petitioner has not produced documentary evidence, as they have charged market value in the sale invoices and they have not produced any evidence that they have received more amount than the sale price. Further, the petitioner did not produce the prevailing market rate for the relevant period, viz., 2003-04. This averment is reiterated in more than one place in the parawise comments.

6. This Court, taking into consideration the fact that this Writ Petition is pending before this Court since April 2017; the matter has been adjournment from time to time, and there is an order of interim stay in operation, is not inclined to keep the Writ Petition any further, at the same

time, would not venture into the factual enquiry as to whether the petitioner has produced the documents before the Assessing Officer or not. For the purpose of the early resolution of the dispute, and so as to enable the petitioner to correct the rate of tax, this Court deems it fit and proper to remand the matter to the respondent for fresh consideration.

7. For all the aforesaid reasons, this Writ Petition is allowed, the impugned order is set aside, and the mater is remanded to the second respondent or fresh consideration, and petitioner is at liberty to produce all necessary documents to substantiate their claims within a period of three days from the date of receipt of a copy of this order, and if the petitioner produces such documents to the satisfaction of the second respondent, then, the second respondent shall consider the documents and pass fresh orders on merits and in accordance with law. On the other hand, if the petitioner fails to produce documents to the satisfaction of the second respondent, then, the second respondent shall close the proceedings on the said ground. However, if such order is passed, then, the petitioner would not be justified in once again approaching this Court, but has to avail other remedies available under the Act, if they are aggrieved by such orders.

8. In the result, this Writ Petition is allowed on the terms, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

12.09.2017

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Index : yes/no

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T.S.Sivagnanam, J.

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