IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.11874 of 2017
And
W.M.P.No.12797 of 2017

Narashia Manji Patel ... Petitioner

Vs.

1. The Presiding Officer,
   Sales Tax Appellate Tribunal,
   (Intergraded Court Complex),
   Pondy-Cuddalore-Main Road,
   Puducherry.

2. The Additional Deputy Commercial Tax Officer, IAC,
   Commercial Taxes Department,
   Puducherry. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the proceedings of the Tax Appeal No.9/2016 pending on the file of the Pondicherry Sales Tax Appellate Tribunal, Puducherry is non-est in law and null and void.

For Petitioner : Mr.P.Suresh
For Respondents: Mr.Harin
Additional Government Pleader (P)

O R D E R
(Order of the Court was delivered by RAJIV SHAKDHER,J.)

1.The petitioner, via the captioned writ petition, seeks the following prayer:

> "issue a Writ of DECLARATION or any other appropriate Writ, order or directions under Article 226 of the Constitution of India declaring the proceedings of the Tax Appeal No.9/2016 pending on the file of the

Pondicherry Sales Tax Appellate Tribunal, Puducherry is non-est in law and null and void or pass such further or other orders as may be deemed fit and Proper in the circumstances of the case and thus render justice."

2.The prayer, is, made in the writ petition, in the background of the following brief facts:

2.1.The petitioner is a Timber Trader. It appears, that the petitioner's business premises were inspected on 11.01.2014, by the Officers of the Commercial Taxes Department, Puducherry.

2.2.On account of the discrepancy in stock, a show cause notice was issued. It appears, that the trading and loss account of the petitioner for the period from 01.04.2013 to 10.01.2014 indicated that as per books, he had stock worth Rs.11,75,37,097/-. Physical verification, however, carried out at the time of inspection, revealed that the petitioner had stock worth only Rs.2,28,78,100/-. Accordingly, the Department set up a case that since the petitioner was unable to account for the stock worth Rs.9,46,58,997/-, he was liable to pay tax.

2.3.The petitioner's explanation, on the other hand, which was submitted on 01.12.2014, inter alia, was that the differential stock was stored in Tuticorin C & F Agents Dock Yard.

2.4.It appears, that the petitioner's explanation was not accepted, which led to an assessment order dated 08.12.2014, being passed.

2.5.The petitioner being aggrieved preferred an appeal with the Appellate Assistant Commissioner (CT), Puducherry (in short, AAC (CT)). This appeal was filed, apparently, on 07.01.2015.

2.6.The AAC (CT), vide order dated 08.07.2015, allowed the appeal of the petitioner.

2.7.Consequently, the Revenue was aggrieved and therefore, preferred an appeal with the Puducherry Value Added Tax Appellate Tribunal, Puducherry, (in short, the Tribunal).

3.We are informed by the learned counsel for the petitioner that notice in the Revenue's appeal, pending with the Tribunal, has been issued and an interim order, granting stay of the operation of the order dated 08.07.2015, issued by the AAC (CT), has been passed.

3.1.We are further informed by the learned counsel for the petitioner that the appeal is coming up for hearing, before the Tribunal, on 09.06.2017.

4.Learned counsel for the petitioner, says that the Revenue has preferred the appeal, with the Tribunal, under Section 49 of the Puducherry Value Added Tax Act, 2007 (in short, the 2007 Act).

4.1.Learned counsel submits that the expression, “any person” appearing in Section 49 of the 2007 Act, would not include the Revenue.

4.2.To buttress his submission learned counsel relies upon Section 58 of the Tamil Nadu Value Added Tax Act, 2006 (in short, the TNVAT ACT, 2006).

4.3.In support of this submission, learned counsel for the petitioner relies upon the judgment of the Division Bench of this Court in the matter of: The State of Tamil Nadu Vs. India Pistons Limited, 1978 (42) STC 134 (Mad.).

5.It is not disputed before us, that the said judgment interprets the provisions of the Madras General Sales Tax Act, 1939.

5.1.We may, also notice that, the instant writ petition was filed by the petitioner, after nearly one year of the appeal being preferred by the Revenue, i.e., on 02.11.2016.

5.2.The petitioner, evidently took no steps to approach the Tribunal, with the plea that has been articulated before us.

5.3.Notwithstanding the aforesaid, according to us, the Tribunal would have to deal with the preliminary issue, with regard to the maintainability of the appeal.

5.4.We are, infact, informed by the learned counsel for the petitioner, that neither any reply has been filed nor has any application been filed with Tribunal, to bring the issue articulated before us, which is that, the appeal is not maintainable, to its notice.

6.In the circumstances, the instant writ petition is disposed of, with liberty to the petitioner, to approach the Tribunal, either by filing a reply or an appropriate application, bringing to its notice, the submission made before us, that the appeal filed by the Revenue is not maintainable, against the order of the AAC (CT).

6.1.It is made clear, that if such steps are taken by the petitioner, the Tribunal, will determine this aspect, as a preliminary issue, before embarking upon the merits of the matter.

7.Learned counsel for the petitioner, says that he has other preliminary issues/ objections, which would require consideration.

7.1.The petitioner is given liberty to raise all preliminary issues/ objections before the Tribunal in a manner known to law.

7.2.The Tribunal, will pass an order, in respect of the preliminary issues/ objections, including the one indicated herein above.

8.This writ petition is closed in the aforesaid terms. Consequently, the connected miscellaneous petition shall also stand closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
   Sales Tax Appellate Tribunal,
   (Intergraded Court Complex),
   Pondy-Cuddalore-Main Road,
   Puducherry.

2. The Additional Deputy Commercial Tax Officer, IAC,
   Commercial Taxes Department,
   Puducherry.

+1 CC to Govt. Pleader sr 39374
+1 CC to Mr.P. Suresh, Advocate sr 38256

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SV(CO)
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