In the High Court of Judicature at Madras

Dated : 20.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.33341 of 2017 & WMP.Nos.36784 & 36785 of 2017

M/s.Lakshmi Hi-Tech Rubber Industry India Ltd., rep.by its Managing Director M.Theyagaraja Prabhu ...Petitioner

Vs

1.The Commercial Tax Officer (Addl.),
Thudiyalur Circle, Coimbatore,
Coimbatore District.

2.The Appellate Deputy Commissioner
(CT) (Main) (FAC), Coimbatore,
Coimbatore District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd Respondent in its impugned proceedings made in Ref.No.380/ 2015/A dated 23.6.2015, quash the same as illegal and contrary to the scheme of the Act and further direct the 2nd Respondent to entertain the appeal petition relating to the assessment year 2014-2015 under Tamil Nadu Value Added Act 2006 and dispose of in accordance with law.

For Petitioner : Mrs.R.Hemalatha
For Respondents : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a manufacturer of rubber banks and balloons, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner challenges the proceedings of the second respondent,

which is in the form of a written memo dated 23.6.2015, by which, the appeal petition filed by the petitioner has been returned as not maintainable. In the impugned memo, the reason assigned by the second respondent is that revision of assessment would have been done under Section 27(1) of the said Act only if the petitioner - dealer was deemed to have been assessed under Section 22 of the said Act and that since the petitioner was not deemed to have been assessed under Section 22 of the said Act, the appeal petition is not maintainable.

3. Therefore, the petitioner approached the Revisional Authority namely the Joint Commissioner of Commercial Taxes, Coimbatore Division in R.P.No.213 of 2015. The Revisional Authority rejected the revision petition as not maintainable and rightly observed that as against the order passed under Section 27(1) of the said Act, an appeal lies to the Appellate Deputy Commissioner. Therefore, the petitioner is before this Court challenging the memo dated 23.6.2015.

4. The issue as to whether the Assessing Officer was justified in revising the assessment under Section 27(1) of the said Act and passing an order dated 15.6.2015 is correct or not, is to be tested by the Appellate Authority and the reason assigned in the written memo for returning the appeal petition is incorrect. In fact, one of the grounds raised by the petitioner before the Appellate Authority is that the assessment order dated 15.6.2015 is without jurisdiction since the petitioner was not deemed to have been assessed under Section 22 of the said Act and that therefore, the question of revision of assessment does not arise. Thus, the reason assigned by the second respondent for returning the petitioner's appeal petition is incorrect.

5. In the light of the above discussions, the writ petition is allowed, the impugned written memo is set aside and the petitioner is directed to represent the appeal petition, along with a copy of this order, before the second respondent, who shall entertain the appeal petition and decide the matter on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer (Addl.), Thudiyalur Circle,
Coimbatore District.

2.The Appellate Deputy Commissioner (CT) (Main) (FAC),
Coimbatore, Coimbatore District.

3.The Joint Commissioner(CT),
Coimbatore Division.

+1cc to Mr.Hemalatha, Advocate SR.No.91783
+1cc to Special Government Pleader SR.No.91769

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VGI(CO)
GN(22/01/2018)