IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.7325 of 2007
and
M.P.No.1 of 2007

M/s.The Nilgiris Co-operative
Printing Works Ltd.,
Rep. By its Special Officer,
Charing Cross, Udhagamandalam,
The Nilgiris. ... Petitioner

Vs.

1.The Appellate Assistant Commissioner
of Commercial Taxes (Main)
Coimbatore - 18.

2.The Assistant Commissioner (CT)
The Nilgiris @ Udagai.

3.The Deputy Commercial Tax Officer,
Udaigai (North), Udhagamandalam,
The Nilgiris. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in AT.M146/07 dated 8/02/2007 and quash the same as illegal, incompetent and further direct the 1st respondent to take the appeal on file.

For Petitioner : Mr.D.J.Venkatesan

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.D.J.Venkatesan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2.The petitioner is a cooperative society viz., the Nilgiris Cooperative Printing Works Limited and they are aggrieved by the order passed by the 1st respondent rejecting the petitioner's appeal petition as being barred by limitation. Before examining the correctness of the order passed by the 1st respondent/Appellate Authority, this Court first consider as to whether the order of assessment passed by the Assessing Officer viz., the 3rd respondent is just and proper.

3.The assessment pertains to the year 2003-2004 under the provisions of the Tamil Nadu General Sales Tax Act. The petitioner society reported a total and taxable turnover of Rs.31,67,255.00 and Rs.20,91,674.00 respectively in their monthly returns filed for the year 2003-2004. The books of accounts maintained by the petitioner society were produced before the 3rd respondent and it was checked and found that all purchases and sales were covered by bills and duly accounted for. The petitioner had claimed exemption on a turnover of Rs.10,57,180.00 being the second and subsequent sales turnover of Registered, Papers and Hardboard which were procured locally. The purchase bills were verified and found that the claim of exemption is in order and it was allowed. With regard to the claim for labour charges and charges for binding work, the claim for exemption was allowed. However, by making the assessment, the 3rd respondent has levied tax at the rate of 10%. The petitioner society was aggrieved by this on the ground that the rate of tax should be 3% and accordingly, a representation was given by them to the 2nd respondent on 06.05.2005.

4.It is stated in the affidavit filed in support of the writ petition that the 2nd respondent assured that the matter will be considered taking note of the fact that the petitioner is a cooperative society. However, after a long period of time, since no action was initiated by the 2nd respondent, the petitioner preferred appeal before the 1st respondent. Undoubtedly, the appeal was belated and returned by the 1st respondent as not maintainable. However, one important issue which is required to be considered is that the 3rd respondent, while levying tax, has adopted the uniform rate of 10% for the whole of the assessment year 2003-2004 instead of levying tax at 3% for the turnover for the period from 01.01.2004 to 31.03.2004. I find that the petitioner society did not have any opportunity to contest this issue. Furthermore, the 3rd respondent has not assigned any reasons as to how he is entitled to collect levy tax at higher rate of 10% for the entire assessment year. Therefore, this Court is satisfied that the assessment order has been passed in violation of principles of natural justice. Consequently, to meet the ends of justice, the assessment order has to be set aside though the petitioner is before this Court challenging the rejection of the petitioner's appeal petition as time barred.

5.For the above reasons, the Writ Petition is allowed in part and the impugned order is set aside as well as the assessment order dated 28.01.2005 is set aside and the matter is remanded to the 3rd respondent for fresh consideration. The 3rd respondent shall issue a notice to the petitioner society, after hearing their objections, redo the assessment only with regard to the levy of tax at 10% for the whole of the assessment year. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Appellate Assistant Commissioner
of Commercial Taxes (Main), Coimbatore - 18.

2.The Assistant Commissioner (CT)
The Nilgiris @ Udagai.

3.The Deputy Commercial Tax Officer,
Udaigai (North), Udhagamandalam,
The Nilgiris.

+1cc to Mr.D.J.Venkatesan, Advocate, S.R.No.73770
+1cc to the Special Government Pleader(Taxes), S.R.No.73231

W.P.No.7325 of 2007

MP(CO)
GN(10/11/2017)