IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.50291 of 2006 and

M.P.No.1 of 2006

M/s.S.K.Traders
Rep. by its Proprietor - R.Selvam
7, First Floor, 25-B, PA Shopping Complex,
Suramangalam Main Road,
Shevapet, Salem - 2. ... Petitioner

Vs.

The Commercial Tax Officer
Leigh Bazaar Circle
Salem ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the Respondent in his proceedings in TNGST No.2621266/03-04 dated 06.10.2006 and to quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. The petitioner is a dealer in Vegetable Oil and Oil Cake and registered on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and the Central Sales Tax Act, 1956 (CST Act).

3. In this writ petition, the petitioner has challenged the assessment order dated 06.10.2006 under the TNGST for the assessment year 2003-2004. This is the third writ petition filed by the petitioner in respect of the same assessment year. The petitioner filed their Form A-1 returns for the said assessment year and reported a total and taxable turnover of

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Rs.23,33,342.00 and Rs.59,789.00 respectively. The Assessing Officer / respondent called for the accounts and checked the same and appears to have secured some details from the check post and was of the prima facie opinion that the petitioner has effected interstate purchases from certain dealers. This lead to issuance of a revision notice dated 05.07.2004 wherein the respondent furnished extract of the movement register of Meenakshipuram Check post of Kerala State, giving the details of the date, vehicle number, name of the consignment, quantity and value. Based on these details, the respondent proposed to assess the turnover by remitting the sale value and determine the total and taxable turnover. There was also a proposal to levy penalty under Section 12 (3) (b)of the TNGST Act.

4. The petitioner submitted their objections dated 14.07.2004. On receipt of the objections, the respondent finalised the assessment by rejecting the contentions raised by the petitioner and passed the assessment order dated 22.07.2004. Challenging the same, the petitioner filed W.P.No.35438 of 2004. The said writ petition was disposed of with certain directions. Pursuant to which, the impugned assessment order has been passed. The writ petition, filed by the petitioner challenging the assessment order dated 22.07.2004, was disposed of with a direction to the respondent to afford opportunity to cross-examine the witnesses, whose invoices were relied on by the respondent. Thus, it has to be seen as to whether this direction has been complied with. In the impugned assessment order, the respondent has stated that he has not sent summons to the other State dealers, but though they have not directed to appear before him, they have failed to do so and therefore has confirmed the proposal and passed the assessment order. It has to be seen as to whether the respondent was justified in doing so.

5.Section 54 of the TNGST Act deals with the 'Power to summon witnesses and production of documents'. In terms of sub-section (1) of Section 54, an assessing authority or an appellate or revising authority or the Tribunal not lower in rank than an Assistant Commercial Tax Officer shall, for the purposes of the said Act, have all the powers conferred on a Court by the Code of Civil Procedure, for the purpose of summoning and enforcing the attendance of any person and examining him on oath or affirmation; and compelling the production of any document. This power has been conferred on the Assessing Officer to gather evidence or information from the third parties, which will not otherwise be available for the purpose of assessment. This issue was considered by this Court in the case of T.M.Rajaganapathi Traders V. Commercial Tax Officer, Salem [(2005) Vol.142 STC 130, wherein in somewhat an identical circumstances, the Court held that the Assessing Officer should exercise his powers under Section 54 of Act for

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summoning and enforcing the attendance of third parties especially when the documents relating to those third parties were relied upon for determining the total and taxable turnover.

6. In the parawise instructions given by the respondent to the learned Special Government Pleader dated 16.02.2007, the respondent would admit that he had sent summons to the other State dealers, but have not turned up. The respondent could not have stopped with merely issuing summons as the statute empowers him to compel production of any documents and also enforce attendance of such third person. If the respondent is unable to secure the presence of third party, then, obviously such material collected from the third party cannot be relied on to penalise the dealer or to re-determine their total and taxable turnover. In other words, if a document relied by the Assessing Officer collected from the third party is not made available to the dealer and if the dealer is not provided an opportunity to cross- examine such third party for no fault committed by them, then, the benefit should accrue to the dealer. Consequently, it has to be held that no Revision of Assessment can be made based on those documents/ statements which remain uncontroverted. The mistake committed by the respondent is writ large on the face of the impugned order. Therefore, the impugned order has necessarily held to be unsustainable.

7.For the above reasons, the Writ Petition is allowed. The impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

kas/Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer
Leigh Bazaar Circle
Salem

+1cc to M/S S.Ramanathan, Advocate(75070)
+1cc to Special Government Pleader (Taxes) Sr.75205

W.P.No.50291 of 2006

SVL(CO)
RVR 15/11/2017

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