IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6311 of 2009 & M.P.No.1 of 2009

M/s.Exquisita Foold Pvt. Ltd.,
rep. by its Director, S.Balasubramani,
D-8, Ambattur Industrial Estates, Chennai-58.
... Petitioner

Vs.

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

2.The Commercial Tax Officer,
Ambattur Assessment Circle,
5, High Court Colony,
Villivakkam, Chennai-49. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the second respondent in his proceedings in TNGST No.1322129/2000-01 dated 26.02.2009 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner, who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short “TNGST Act”), is aggrieved by the impugned assessment order dated 26.02.2009, for the assessment year 2000-01, in respect of the turnover on sale of readymade Chappathi, which has been assessed to higher rate of tax at 16% instead of 11%. This Court need not labour much to take a decision in the matter, since in the assessee's own case, the very same respondent/officer has assessed the petitioner to tax at 11% for the assessment year 2001-02, by order dated 13.08.2008. In the said assessment order, the respondent has followed the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes, under Section 28 (A) of the TNGST Act, vide circular dated 12.11.2001. So far as the impugned assessment order is concerned, it pertains to the assessment year 2000-01. The revision notice was issued by the respondent on 16.10.2007, that is, prior to the passing of the assessment order for the subsequent year 2001-02, dated 13.08.2008. However, when the respondent took up the impugned assessment in 2009, by then, he had already passed the order in favour of the petitioner for the subsequent year by following the circular of the Special Commissioner. Therefore, he cannot take a contrary view to the stand already taken and there is no material forthcoming in the impugned assessment order that there was a basis to tax the petitioner at higher rate for the impugned assessment year. Therefore, the assessment of tax at the rate of 16% on the sale of readymade Chappathi for the assessment year 2000-01 is not sustainable in law.

3.Accordingly, this writ petition is allowed, the impugned assessment order, in so far as it is with regard to turnover on the sale of readymade Chappathi is set aside. Though the impugned order is set aside, the case need not be remanded to the respondent for re-doing the assessment, because originally the respondent had levied tax at 11%, vide assessment order dated 31.12.2002, and the present impugned order is a revision of assessment. Therefore, the impugned revised assessment order having been set aside, automatically the original assessment order dated 31.12.2002, would stand revived and the petitioner is liable to tax only at 11% on the turnover relating to sale on readymade Chappathi. No costs. Consequently, connected miscellaneous petition is closed.

abr

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

2.The Commercial Tax Officer,
Ambattur Assessment Circle,
5, High Court Colony,
Villivakkam, Chennai-49.

+1cc to Mr.S.Ramanathan, Advocate SR.No.78147/17
+1cc to Government Pleader SR.No.78366/17

W.P.No.6311 of 2009

SR(CO)
SM:29.11.2017