In the High Court of Judicature at Madras

Dated : 21.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25063 of 2017 & WMP.No.26471 of 2017

J.K.Tyre & Industries Limited,
Rep. by its Regional Operating
Manager Saroj Kumar Padhy ...Petitioner

Vs

The Deputy Commissioner (CT)-II,
(FAC), Large Taxpayers Unit,
No.34, Montieth Road, Egmore,
Chennai-8. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent herein in TIN: 33250620075/2016-2017 dated 16.8.2017 and quash the same.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent. By consent, the writ petition itself is taken up for final disposal.

2. The learned counsel for the petitioner submits that identical orders were challenged by the petitioner in W.P.Nos.4196 to 4200 of 2017 for the assessment years 2011-12 to 2015-16 and in this writ petition, an identical assessment order for the year 2016-17 has been challenged. It is further submitted that those writ petitions were disposed of by a common order dated 04.9.2017 along with W.P.Nos.14023 to 14027 of 2017 and it is prayed that this writ petition also may be disposed of on similar lines.

3. Mr.K.Venkatesh, learned Government Advocate appearing for the respondent does not dispute the position that the common order passed in the earlier writ petitions in the petitioner's

own case for the earlier assessment years would cover the present writ petition as well.

4. This Court, while disposing of the said writ petitions by a common order dated 04.9.2017, made the following observations :

> "22. After elaborately hearing the learned counsels, this Court is fully convinced that there are serious flaws in the decision making process, which would render the impugned order not sustainable in law. Firstly, as pointed out, the impugned order has proceeded beyond the proposal made in the show cause notice. The endeavour made by the assessing officer during the assessment proceedings by issuing summons to the purchaser and obtaining certain details from them, without notice to the petitioner, is a serious error and amounts to a gross violation of principles of natural justice. The petitioner had no opportunity to rebut such stand or explain their position on the factual basis. Thus, this procedural error render the impugned proceeding as bad in law.
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> 23. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of Rallis India Limited v. State of Tamil Nadu reported in 1994 vol.92 STC (325), which is also some what a similar transaction, where the parties claimed it to be an interstate sale and the Hon'ble Division Bench held as follows:
>
> "14. We, therefore, hold that the assessing authorities and the Tribunal were not right in holding that the goods in question were transferred to Cochin in pursuance of contracts of sale. We hold that Section 3(a) does not come into play. It is the specific case of the petitioners that "C" forms were filed under protest reserving their right to press afterwards a case for reduced rate of tax. On the mere fact that "C" forms are available to cover th entire turnover relating to the transfer of goods from Uthagamandalam to Cochin describing M/s.RIL, Bombay, as purchasing dealer and the petitioner-company as seller, it cannot be presumed that the movement of goods from Uthagamandalam to Cochin was on the basis of the orders from M/s.RIL,

Bombay. As we have already stated, the fact whether the assessee had sold ossein from the Cochin godown and whether such sales are assessable to tax in that State or not are beyond the scope of these tax cases."

24. The above reasons are sufficient to hold that the impugned proceedings are wholly unsustainable warranting interference at the hands of this Court. Accordingly, the impugned assessment orders dated 30.01.2017 are set aside and the matters are remanded to the respondent for fresh consideration, after affording an opportunity of personal hearing, in which the petitioner should be afforded full opportunity to explain the nature of transaction and the purchaser, M/s.ALL, shall be summoned and they shall be heard in the presence of the petitioner, after which assessment shall be re-done in accordance with law."

5. Therefore, following the aforesaid decision, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration after affording an opportunity of personal hearing to the petitioner. In the personal hearing, the petitioner shall be afforded every opportunity to explain the nature of transaction and the purchaser M/s.Ashok Leyland Limited shall be summoned and heard in the presence of the petitioner, after which, the assessment shall be redone in accordance with law. Since this Court already issued similar directions, for the earlier assessment years, for the assessment year in question i.e 2016-17 also, the respondent shall adopt the same procedure and decide the matter. No costs. Consequently, the above WMP is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Deputy Commissioner (CT)-II (FAC), Large Taxpayers Unit, No.34, Montieth Road, Egmore, Chennai-8.

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SP(10/10/2017)