IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGANANAM

W.P.No.7730 of 2009
and W.M.P.No.1 of 2009

M/S.Rama Machinery Corporation Ltd.,
Represented by its Director,
Sunil Jhun Jhunwala,
Now at 10/41, Flat No.3,
Kripa Sankari Street,
West Mambalam,
Chennai – 600 033. .. Petitioner

Vs.

The Commercial Tax Officer,
Thiruvottiyur Assessment Circle,
39, North Mada Street,
Chennai – 19. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari, calling for the records of the proceedings of the respondent in TNGST 936210/1992-93 dated 30.10.2008 and quash the same.

For Petitioner	..	Mr.S.Raveekumar
For Respondent	..	M/s.Narmadha Sampath Special Government Pleader

O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and M/s.Narmadha Sampath, learned Special Government Pleader appearing for the respondent.

2.The petitioner has filed this writ petition challenging the order of assessment dated 30.10.2008 for the assessment year 1992-93 under the provisions of the Tamil Nadu General Sales Tax Act (TNGST Act) and in respect of the assessment under the Central Sales Tax Act (CST Act), the petitioner had filed W.P.No.25220 of 2008 and this Court by order dated 11.12.2014 disposed of the writ petition granting liberty to the petitioner to file an application under Section 55 of the TNGST Act. The operative portion of the order reads as follows:-

> *4. Further, the assessing officer states that the dealers have not proved with recorded evidence that the consignment agents have paid taxes on the local sales from and out of which the goods are stock transferred by the assessee for the entire turnover. Further, it is pointed out that certain columns in Form-A has not been properly filled up. Therefore, the onus is on the petitioner to prove to the satisfaction of the assessing officer that the*

presumption which he has arrived at is actually incorrect. However, this exercise cannot be done in a writ petition.

5. It is to be noted that when the petitioner submitted their objections to the pre-assessment notice dated 28.12.2007 by their letter dated 21.08.2008, the petitioner specifically pleaded that if any further details are required, they are ready to furnish the same after hearing from the respondent. On perusal of the impugned assessment order, it is seen that the assessing authority did not out rightly reject the case of the petitioner but has entertained certain doubts with regard to nature of transaction and thereafter, disbelieved the version of the petitioner that the relationship between themselves and their dealers in Kerala is that of a principle and agent. In such circumstances, the assessing authority could have granted one more opportunity to the petitioner and called for further particulars. However, that has not been done. This eventually lead to the writ petition being entertained and an order of interim stay has been granted by this Court and the same is in force from 2008 onwards.

6. In my view the issues involved in this writ petition involves adjudication into disputed questions of fact which obviously cannot be done in a writ petition. Therefore, this Court deems it appropriate to grant liberty to the petitioner to file an application *under Section 55 of the TNGST Act which is a power given to rectify any error apparent on the face of record. According to the petitioner, for the previous assessment years, these transactions were treated as consignment transactions and the records are available with them. Further, the dealers in Kerala had paid taxes and further, their contention is that merely because goods were sold on the same day, it cannot be a ground to treat the sale as a interstate sale. These issues can very well be raised by the petitioner before the assessing officer by filing a petition under Section 55 of the TNGST Act.*

7. Accordingly, the writ petition is disposed of by directing the petitioner to file a petition under Section 55 of the TNGST Act raising all the contentions which shall be by way of clarification to the findings rendered by the assessing officer which has been rendered on the ground that sufficient documents have not been placed before the assessing officer and such petition shall be filed within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall offer an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

4.Since more or less identical issue has been raised by the petitioner in this writ petition as well and the only difference is the assessment under the TNGST Act, this Court is inclined to dispose of the writ petition on similar lines. Accordingly, the writ petition is disposed of by directing the petitioner to file a petition under Section 55 of the TNGST Act raising all the contentions which shall be by way of clarification to the findings rendered by the assessing officer which has been rendered on the ground that sufficient documents have not been placed before the assessing officer and such petition shall be filed within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall offer an opportunity of personal hearing to the petitioner and pass a reasoned order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

06.11.2017

Index:Yes/No
AT

T.S.SIVAGNANAM, J.

AT

To

The Commercial Tax Officer,
Thiruvottiyur Assessment Circle,
39, North Mada Street,
Chennai – 19.

W.P.No.7730 of 2009
and W.M.P.No.1 of 2009

06.11.2017