IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20804 of 2004 &
W.P.M.P.No.25045 of 2004

M/s.Vignesh Enterprises.
Rep. By its Prop. R.P.Kumaresan,
Leigh Bazaar, Salem - 9. ... Petitioner

Vs.

1.Deputy Commercial Tax Officer,
Leigh Bazaar Circle, Salem.

2.Appellate Assistant Commissioner (CT),
Salem. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned notice in Form No.T.2 in Na.Ka.2712/01/A3 dated 15.03.2004 issued by the first respondent herein and to quash the same and to direct the second respondent to entertain the appeals for the assessment year 1999-2000 and 2000-2001 without insisting the payment of disputed tax following the orders for the assessment years 1997-98 and 1998-99 passed by the second respondent dated 23.01.2004.

For Petitioner : M.Md.Ibrahim Ali
For Respondents : Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard Mr.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2.This writ petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to set aside the notice issued by the first respondent dated 15.03.2004 and to direct the second respondent to entertain the appeals filed by the petitioner as against the assessment orders for the years 1999-2000 and 2000-2001 under the provisions of the Tamil Nadu General Sales Tax Act, 1959, without insisting upon the payment of disputed tax in the light of the assessment made for the years 1997-98 and 1998-99, pursuant to the orders passed by the second respondent dated 23.01.2004.

3. The place of business of the petitioner was inspected by the Enforcement Wing Officials on 26.02.2001 and based on such inspection, notices were issued for reopening the assessment for the years 1997-98, 1998-99 and 1999-2000. Though objections were filed by the petitioner on 21.05.2001, the objections were rejected and the assessment orders were passed on 18.08.2001.

4. As against the orders of assessment for the years 1997-98 and 1998-99 are concerned, the petitioner preferred two appeals before the second respondent in A.P.Nos.40 & 48 of 2003. Those appeals have been allowed by the second respondent by orders dated 23.01.2004, holding that the petitioner did not have an opportunity to cross examine the third parties and therefore, the orders of assessment are made in violation of principles of natural justice. Accordingly, the matter was remanded for fresh consideration to the Assessing Officer for setting aside the assessment order with a direction to conduct cross examination of third parties as desired by the petitioner.

5. The subject assessment is for the year 1999-2000 and 2000-2001. Since, these assessment orders were also based upon a common inspection and common notices and the only difference being have a different assessment year and the transaction being identical and the issues to be considered as to whether levying tax at 4% was justified and as to whether levy of penalty under Section 16(2) of the TNGST Act, 1959 was justified or also common to all the four assessment years.

6. Therefore, this Court is of the view that the assessment for the years 1999-2000 and 2000-2001 should also be redone in terms of the directions issued by the Appellate Assistant Commissioner, in its order dated 23.01.2004 in A.P.Nos.40 & 48 of 2003.

7. In the counter affidavit filed by the respondents, it is stated that opportunity was provided to the petitioner, but they have not utilized the opportunity. This averment is contrary to the finding rendered by the Appellate Assistant Commissioner, who has analyze the matter in depth and rendered a finding that the petitioner had no opportunity to cross examine the third parties and there was violation of principles of natural justice.

8.Accordingly, this writ petition is allowed and the impugned notice is set aside. Consequently, the order of assessment dated 30.05.2001 is set aside and the matter is remanded to the first respondent for fresh consideration to be heard and decided along with the assessment for the years 1997-98 and 1998-99, which have been remanded for fresh consideration with a direction for cross examination by the second respondent Appellate Authority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

abr/vsm

To

1. Deputy Commercial Tax Officer,
   Leigh Bazaar Circle, Salem.

2. Appellate Assistant Commissioner (CT),
   Salem.

+1cc to M/S.M.Md Ibrahim Ali, Advocate Sr. 48599

+1cc to the Special Government Pleader, Sr. 49216

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GMI(CO)
VR(09/08/2017)