IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.41348 of 2006
M.P.No.1 of 2006

M/S. GRUNDFOS PUMPS INDIA PVT. LTD. [PETITIONER]
REP. BY N.K.RANGANATH
CHIEF EXE. OFFICER
119/121 CHAMIERS ROAD
NOW AT 118 OLD MAHABALIGIPURAM RD
THRIPAKKA CH 96

Vs

THE COMMERCIAL TAX OFFICER
ADAYAR I ASSESSMENT CIRCLE
46 GREENWAYS ROAD CHENNAI 28
[RESPONDENT]

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari calling for the records on the files of the respondent in TNGST 0861567/03-04 dated 27.6.06 and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, has filed this writ petition

challenging the order of assessment under the said Act for the year 2003-2004.

3. The issue pertains to classification of the product manufactured/imported and sold are pumps or motor pumps and would fall within item 26 part C to the First Schedule. The petitioner, on receipt of the show cause notice, sent their reply dated 28.02.2006, wherein, they have elaborately stated about the functioning and operation of the products sold by them and also undertook to conduct a demonstration before the Assessing Officer to show that the products sold by them are only pumps. The respondent, while completing the assessment, did not accept the contention raised by the petitioner, but confirmed the proposal in the notice, by stating that the circumstances under which the disputed item were treated as imported goods, which have been clearly set forth in the pre-assessment notice issued to the petitioner. Though there are certain other observations, to complete the assessment stating that the pre-assessment notice contains all facts is not tenable, because, after the pre-assessment notice, the petitioner had submitted their objections and therefore, a decision has to be given on the objections. Further more, for the previous assessment year i.e., 2002-2003, the matter has now been remanded to the Assessing Officer for fresh consideration. For the 2004-2005, which was put to challenge by the petitioner, ultimately the Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.15 of 2011, by order dated 22.03.2016, has allowed the appeal and remanded the matter back to the Assessing Officer to consider the nature of the product, as in the opinion of the Tribunal, whether they are pumps only and perform the function of a pump and fall under item 26 part C to the First Schedule or otherwise can be considered only on a demonstration being done.

4. It is submitted by the learned counsel for the petitioner that though the matter has been remanded to the Assessing Officer for the previous year and the subsequent year, till date, the Assessing Officer has not taken up the matters for consideration.

5. In the preceding paragraph, I have held that the manner in which the assessment has been completed is not tenable. Therefore, for the said reason, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the Assessing Officer for fresh consideration, who shall direct the petitioner to conduct a live demonstration of all the products sold by them to establish their case and after hearing

the parties, take a decision on merits and in accordance with law, including the matters which have been remanded to the Assessing Officer for fresh consideration for the assessment years 2002-2003 and 2004-2005.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
THE COMMERCIAL TAX OFFICER
ADAYAR I ASSESSMENT CIRCLE
46 GREENWAYS ROAD CHENNAI 28

+1cc to M/s.C.Venkatraman,Advocate for the petitioner, S.R.No.47485

+1cc to Special Government Pleader, Advocate, S.R.No.47615

W.P.No.41348 of 2006

KJ(CO)
CU(27/07/2017)