IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition Nos.13836 and 13837 of 2007
and
M.P.Nos.1 and 1 of 2017

1. M/s. Krishna Trading Company,
rep. by its Prop. Sunil Kumar Singhal,
8606, Park Road,
Erode

...Petitioner in W.P.No.13836 of 2007

2. M/s. Amar Traders,
rep. by its Proptx. Anitha Agarwal,
29, Ottukara Chinniya Street,
Erode.

...Petitioner in W.P.No.13837 of 2007

Versus

The Commercial Tax Officer,
Park Road Circle,
Erode.

...Respondent in both the W.Ps

These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in his notice in Assessment Nos.2861177/03-04 and 2861488/03-04 respectively dated 22.11.2006 and 14.11.2006 respectively and quash the same as illegal.

For Petitioners : Mr. S. Ramanathan Both WP's

For Respondent : Mr. K. Venkatesh, Government Advocate Both WP's

C O M M O N O R D E R

The challenge in these Writ Petitions is to the notices issued by the respondent, whereby, the respondent proposed to revise the assessment under Section 16 (i)(a) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as TNGST Act) and to levy tax.

2. At the outset, Mr.S. Ramanathan, the learned counsel appearing for the petitioners would submit that, the issue involved in these Writ Petitions is covered by the decision of the Hon'ble Division Bench of this Court, in (Hotel Shri Kannan Vs. State of Tamil Nadu and another) reported in [(2007) 8 VST 97, following which, W.P.Nos.25419 and 25420 of 2005 were disposed of, by this Court, by order, dated 09.08.2017. The learned counsel also produced a photocopy of the order, dated 09.08.2017, for reference, and prays that similar direction may be issued in the present cases as well.

3. Mr. K. Venkatesh, the learned Government Advocate for the respondent do not dispute the position and agrees that the issue involved in this Writ Petition is covered by the decision rendered in the above referred case.

4. On a perusal of the decision relied upon by the learned counsel for the petitioner, it is seen that this Court, in the light of the decision of the Hon'ble Division Bench of this Court, in Hotel Shri Kannan's case (referred supra) disposed of W.P.Nos.25419 and 25420 of 2005, by order, dated 09.08.2017. In this connection, it would be apposite to quote the relevant portion from the said order, and it is extracted as hereinbelow:-

> " " The petitioner in these Writ Petitions challenge the notice issued by the respondent dated 05.01.2005 proposing to revise the turnover. On similar facts, several other dealers challenged the assessment orders and the matter was heard by the Hon'ble Division Bench in the case of Hotel Shri Kannan Vs State of Tamil Nadu and another [2007]8 VST 97 [Mad], wherever assessment orders were passed, they were set aside and the dealers were directed to submit their objections to the impugned show cause notice and other directions were also issued by the Hon'ble Division Bench. The operative portion of the judgment reads as follows :
>
> > "26. Since the dealers, in these batch of cases, except a few, who, unfortunately, failed to place reliance on the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000, approached

this Court challenging the show cause notices, taking into consideration the scope of section 7A of the Tamil Nadu General Sales Tax Act, 1959, suffice it to pass the following order:

1.The assessment orders passed without reference to the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 stand set aside;

2. All the dealers are permitted to submit their objections to the impugned show cause notices, supported with materials they propose to rely upon, of course placing reliance on Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 within thirty days from the date of receipt of copy of this order and the same shall be forwarded by the respective assessing authority to the Commissioner of Commercial Taxes; and

3. To direct the Government to authorise the Commissioner of Commercial Taxes to decide :

[a] as to the applicability of the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 to the case of the dealers, depending upon the facts of each case; and

b] to pass such other further

orders, as the case may be, in accordance with law."

3. In these Writ Petitions, the petitioners challenge only the show cause notice and therefore, they are directed to submit their objections to the impugned show cause notices, supported with materials they propose to rely upon, of course placing reliance on Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 within 30 days from the date of receipt of copy of this order and the same shall be forwarded by the respective assessing authority to the Commissioner of Commercial Taxes.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed. " "

5. Thus, following the above decision, the present Writ Petitions are also disposed of, on the same lines. Accordingly, the petitioners are directed to submit their objections to the impugned show cause notices, supported with materials, they propose to rely upon, of course placing reliance on Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 within 30 days from the date of receipt of copy of this order and the same shall be forwarded by the respective assessing authority to the Commissioner of Commercial Taxes, who shall pass orders on merits and in accordance with law. Till such time, the order of interim stay granted by this Court shall continue. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

sd

To

The Commercial Tax Officer,
Park Road Circle,
Erode.

+2cc to Mr. S. Ramanathan Advocate, S.R.No. 68814, 68815

W.P.Nos.13836 and 13837 of 2007

RK(CO)
TR(06/12/2017)