IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12767 & 12768 of 2006
&
W.P.M.P.No.14360 & 14361 of 2006

M/s.Arun Impex,
Rep. by its Partner,
Mr.Umesh Madan ... Petitioner in both the Petitions

Versus

The Deputy Commercial Tax Officer,
Egmore II Asst. Circle,
Chennai. ... Respondent in both the Petitions

Prayers: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the impugned proceeding of the respondent in TNGST/0541280/2001-2002 & 2002-2003, respectively and quash the impugned order dated 13.03.2006 as the same has been passed violating the provisions of the TNGST Act, against the principles of natural justice and also against the law laid by the Supreme Court and the Madras High Court in a catena of decisions and further direct the respondent to consider the objections dated 09.03.2006 filed by the petitioner.

For Petitioner : Mr.P.Rajkumar
(in both the petitions)

For Respondent : Mr.K.Venkatesh,
(in both the petitions) Government Advocate

C O M M O N   O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959, is aggrieved by the revised assessment orders passed for the years 2001-02 and 2002-03. The admitted fact is that the assessment for the relevant years was completed by the Assessing Officer and while passing

the assessment order, he held that the petitioner has effected the purchase of iron scraps from registered dealers inside the State and sold them inside the State and all the purchases and sales are covered by bills. There was no inter-State transaction on sales and there was no tax collection on sale bills. However, the claim was verified with reference to purchase bills and found that the purchase bills contain necessary proof of sufferance of tax at earlier stage inside the State. The claim of exemption of second sales of M.S. and Iron scraps is in order and accordingly, the exemption was allowed for the said turnovers.

3. After about 3 years, the respondent issued notices dated 21.02.2006 alleging that the transaction, which the petitioner had with M/s.Sabari Exim Pvt. Ltd., Wallajah Road, Chennai-2, is bogus transaction, and they are bill traders and the actual movement of goods was not proved and therefore, the respondent proposed to disallow the claim of exemption and levy tax and penalty.

4. The petitioner sent an elaborate reply on 09.03.2006 objecting to the revision notice, in which they pointed out that M/s.Sabari Exim Pvt. Ltd. is an existing dealer and carrying on business and registered on the file of Chepauk Assessment Circle and to support their contentions they produced various documents. However, the respondent did not consider any of the documents or the explanation offered by the petitioner and stated that payment of fees of renewal alone is not sufficient. Unfortunately, the respondent did not take note of registration certificate, payment of renewal fees etc., by M/s.Sabari Exim Pvt. Ltd., which are available with the petitioner. If the petitioner-Company had been given an opportunity of personal hearing, they would have been able to convince the respondent. However, the respondent stated that they have already given enough time for filing their objections and there is no need for personal hearing. One more important fact is that M/s.Sabari Exim Pvt. Ltd. has been assessed both under the TNGST and CST Act and assessment order for the year 2001-02 dated 03.02.2004 and 05.02.2004 have been produced before the Court and it is stated that this assessment has attained finality.

5. In such factual scenario, the action of the respondent in reopening the assessment is cryptic and clear change of opinion and nothing more. Accordingly, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

The Deputy Commercial Tax Officer,
Egmore II Asst. Circle,
Chennai.

+1cc to Mr.P.Raj Kumar, Advocate, S.R.No.57117
+1cc to the Special Government Pleader(T), S.R.No.57529

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CS IV
CA(01/09/2017)