IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2017

Coram

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

Writ Petition No.12167 of 2004
and
W.P.M.P.No.14228 of 2004

M/s. Sri Jaya Sakkara Fridge House
Rep. by its Managing Partner
M.Pakkirisamy
No.6, Big Street,
Kumbakonam 612 001. ...Petitioner

Vs.

1. The Commercial Tax Officer (FAC)
Kumbakonam - I Assessment Circle
Kumbakonam - 612 001.

2. The Check Post Officer
Pennaiyar Bridge Check Post,
Alpet, Cuddalore. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records pertaining to the order of the first respondent issued in R.C.B1/948/2003, dated 16.03.2004 and the quash the same as arbitrary, illegal and as excess of jurisdiction.

For Petitioner : Mr.P.R.Kumar, for
Mr.R.Tholgappian

For Respondents : Mrs.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.P.R.Kumar, the learned counsel appearing for the petitioner and Mr.S. Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. The petitioner is a dealer in Refrigerators, Washing Machines, Televisions etc., and registered on the file of the

first respondent/Commercial Tax Officer, under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

3. In this Writ Petition, the petitioner has challenged the proceedings of the first respondent, dated 16.03.2004, which is purported to be an assessment order for the year 1998-99.

4. After hearing the learned counsel appearing for the petitioner and the learned Additional Government Pleader and the learned Additional Government Pleader pursuing the materials placed on record, it is seen that there are glaring defects in the impugned order. Firstly, the name of the dealer has not been correctly mentioned, as found in the registration certificate. Secondly, in the assessment order, it is mentioned as 2002-03, but, in the body of the assessment, it is for the year 1998-99. Above all, the petitioner, while submitting their objections to the pre-assessment notice, has raised a specific contention that, they are neither the owner of the goods, nor a person in charge of the goods vehicle. According to Section 44-A (1) (c), the owner of the goods vehicle, or a person in charge of the goods is jointly and severally liable to pay the tax. Further, the petitioner has also relied upon the order passed by the Appellate Assistant Commissioner (CT), Thanjavur, pertaining to the petitioner's own case, that too, for the assessment years 1997-98, in A.P.No.106 of 2003, dated 05.08.2003. However, the first respondent, while passing the impugned order, has not dealt with these two issues, which, in the considered opinion of this Court, are main and core issue. It is further submitted that, the order passed by the Appellate Assistant Commissioner (CT), Thanjavur, in A.P.No.106 of 2003, has been affirmed by the Sales Tax Appellate Tribunal.

5. In the light of the above fact that the first respondent has not considered these issues, the matter has to be remitted back to the first respondent for fresh consideration. Accordingly, the Writ Petition is allowed, the impugned order is set aside, and the matter is remanded to the first respondent for fresh consideration, who shall consider all the legal and factual issues as well as the applicability of the decision of the Appellate Assistant Commissioner (CT), Thanjavur, in A.P.No.106 of 2003, dated 05.08.2003, and afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sd

To

1. The Commercial Tax Officer (FAC)
   Kumbakonam - I Assessment Circle
   Kumbakonam - 612 001.

2. The Check Post Officer
   Pennaiyar Bridge Check Post,
   Alpet, Cuddalore.

+1cc to Mr.R.Tholgapppian, Advocate Sr. 48140
+1cc to Special Government Pleader Sr. 48310

Writ Petition No.12167 of 2004

VGII(CO)
VR(31/8/2017)