IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.29726 of 2007
&
MP No.1 of 2007

Tvl.Anbu Sago Factory
Represented by its Proprietor
V.Swamikannu
H.Pudupatti, Pappireddipatti (TK)
Dharmapuri District - 636 905 ... Petitioner

Vs.

The Deputy Commercial Tax Officer
Harur Assessment Circle
Harur ... Respondent

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records on the files of the respondent herein in Assessment No.TNGST.3340215/2001-02 dated 25.4.2007 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.S.Narmadha Sampath
Special Government Pleader

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O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.S.Narmadha Sampath, learned Special Government Pleader appearing for the respondent.

2. The petitioner has impugned the order of Assessment under the provisions of TNGST Act, 1959 for the Assessment year 2001-02. The only ground on which the impugned order has been challenged is by contending that the revision of assessment has been done based upon the electricity consumption in the petitioner's factory. Since this issue was raised and similar matters were pending at the relevant point of time, the Court, while admitting the writ petition, granted an order of interim

stay. The writ petition has been pending for over 10 years and it it has come up for final disposal today.

3. On a perusal of the impugned order I find that the assessment is not merely based upon the electricity consumption, but what the Assessing Officer seeks to do is to substantiate the sale suppression by referring to the electricity consumption. Therefore, strictly speaking, this case will not be covered in the batch cases where the revision of assessment has been based solely upon the electricity consumption. Therefore, the petitioner cannot maintain this writ petition and the petitioner has to necessarily avail the remedies under the Act. However, considering the fact that this writ petition has been pending for more ten years and till date not a single pie has been recovered by the respondent as tax, this Court proposes to afford one more opportunity to the petitioner subject to certain conditions.

Accordingly, the writ petition is disposed of by directing the writ petitioner to pay 15% of the disputed tax as quantified in the impugned Assessment order within a period of three weeks from the date of receipt of a copy of this order. If 15% of the disputed tax is paid, then the petitioner is entitled to treat the impugned Assessment order as show-cause notice and submit their objections within a period of 15 days thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment. If the petitioner fails to comply with the above condition, the benefit of this order shall not enure to the petitioner and the writ petition will stand automatically dismissed and the respondent is at liberty to initiate recovery proceedings. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commercial Tax Officer
Harur Assessment Circle
Harur
+1 cc to M/s.R.Senniappan Advocate sr 78079
+1 cc to Spl GP(Taxes) sr 77257

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