IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.34757 of 2006
and
M.P.No.1 of 2006

TVL.SAKTHI MASALA (P) LTD.,
REP.BY ITS MANAGER M.NACHIYAPPAN,
S.F.NO.1052/5 & 6, PERUMAPALAYAM,
NASIYANUR,
MULLAMPATTI POST-638 107
ERODE DISTRICT. ... PETITIONER

Vs

1. THE STATE OF TAMILNADU,
REP.BY ITS SECRETARY TO GOVERNMENT,
COMMERCIAL TAXES AND RELIGIOUS ENDOWMENTS DEPARTMENT,
FORT ST., GEORGE, CHENNAI-9.

2 . THE COMMERCIAL TAX OFFICER,
PERUNDURAI ASSESSMENT CIRCLE,
PERUNDURAI,
ERODE DISTRICT. ...RESPONDENTS

Prayer: Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records relating to the notice issued by the 2nd respondent dated 31.07.2006 in respect of the petitioner's TNGST Assessment No.2922200 for the assessment year 2004-2005 and to quash the same.

For Petitioner : Mr. A.N.R.Jaya Prathap for
Mr.N.Inbarajan

For Respondents : Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard Mr.A.N.R.Jaya Prathap, learned counsel for Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition, challenging the notice issued by the respondent dated 31.7.2006 under the provisions of Tamil Nadu General Sales Tax Act, 1959, for the Assessment year 2004-05.

3. The challenge to the impugned proceedings can be broadly classified under three heads namely with regard to (i) rate of tax payable for Bonda Bajji Mix, (ii) Whether the purchase value attracts levy of tax under section 7A and (iii)all other issues such as difference in turnover, imposition of additional sales tax, penalty etc.

4. So far as the first issue is concerned namely the rate of tax levyable for Bajji Bonda mix, the same is covered by a decision of the Hon'ble Division Bench in the assessees own case in Sakthi Masala (P) Ltd. and others Vs.Special Commissioner and Commissioner of Commercial Taxes, Chennai and another (2010) 29 VST 162 (Mad). In the said decision it was held that the rate of tax can be only 4%. Therefore the proposal on the said head, proposing to tax the petitioner at16% has to be set aside.

5. With regard to the second issue viz., as to whether the purchase value attracts levy of tax under Section 7A, this issue is covered by a decision in the case of Hotel Shri Kannan Vs. State of Tamil Nadu and Another (2007) 8 VST 97 (Mad) wherein the Division Bench has held 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 24.12.1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated 4.10.2000, approached this Court challenging the show cause notices, taking into consideration the scope of Section 7-A of the Act referred to above, 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 24.12.1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated 4.10.2000 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 24.12.1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated 4.10.2000, 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 24.12.1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated 4.10.2000 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.

27. The writ appeals and writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

In terms of the above directions the matter has to be sent back to the Assessing Officer to follow directions of the Division Bench.

6. With regard to other issues the petitioner has to necessarily file their objections for which reasonable time will be granted.

7. Hence, the Writ petition is disposed of with the following directions:-

1.Rate of tax for Bajji Bonda mix shall be 4% by following the decision in the assesse's own case Sakthi Masala (P) Ltd. and others Vs.Special Commissioner and Commissioner of Commercial Taxes, Chennai and another (2010) 29 VST 162 (Mad) and the assessing officer is directed to levy tax at the rate of 4%.

2. With regard to the levy of tax under Section 7A, the petitioner is directed to submit their objections to the impugned show cause notice 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 30days 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.

3.With regard to other issues also, the petitioner is granted 30 days time to submit their objections after which the respondent shall afford an opportunity of personal hearing and complete the assessment in accordance with law.

8. Accordingly, writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. THE STATE OF TAMILNADU,
REP.BY ITS SECRETARY TO GOVERNMENT,
COMMERCIAL TAXES AND RELIGIOUS ENDOWMENTS DEPARTMENT,
FORT ST., GEORGE, CHENNAI-9.

2 . THE COMMERCIAL TAX OFFICER,
PERUNDURAI ASSESSMENT CIRCLE,
PERUNDURAI,
ERODE DISTRICT.

+2cc to Mr.N.Inbarajan, Advocate Sr. 68330

W.P. No.34757 of 2006

KS(CO)
VR(25/10/2017)