IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.33310 to 33312 of 2003
W.M.P.Nos.40293 to 40295 of 2003

M/s.Manjushree Plantations Ltd.,
Ouchterlony Valley, New Hope Post,
The Nilgiris – 643 223. ... Petitioners in all the WPs

Vs.

1.The Deputy Commercial Tax Officer,
Gudalur, The Nilgiris.

2.The Principal Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai. ... Respondents in all WPs.

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certioraried mandamus to call for the records of the first respondent in respect of the assessment years 1994-95, 1995-96 and 1996-97 respectively under the CST Act, 1956, and quash the order in CST Nos.345516/94-95, 345516/95-96, 345516/96-97, dated 28.07.2003 and further direct the first respondent to accept the Export Documents and Tax Payment Certificates as proof for the payment of taxes in respect of the very same transactions as have been assessed to tax under the impugned proceedings by the first respondent, and to restore the claim of exemption granted to the petitioner in respect of coffee and cardamom under Explanation I to Section 2(r) of the TNGST Act, 1959.

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2. Though the writ petitioner has challenged the impugned proceedings as being barred by limitation as revision notices alleging that they were issued after a period of 5 years from the relevant assessment years, the said contention is not pressed before this Court as the petitioner seeks to advance his arguments on the other issues, which, according to them, is wholly in their favour. Therefore, this Court records the said submission that the petitioner is giving up the plea with regard to the limitation.

3. The respondent had completed the assessment and levied the tax on the sale of coffee for the relevant assessment year primarily on the ground that the petitioner has not produced the certificate obtained from the Auctioneers to prove that the coffee sold by them has suffered tax. Soon after the impugned assessment order, the petitioner has submitted a representation dated 08.09.2003 pointing out that while issuing the notice, the above issue was not raised by the Assessing Officer and only at the time of filing of the reply to the re-assessment notice, it was mentioned that the tax was paid by the Coffee Board/Auctioneers and if the respondent wanted the proof, it was well open to issue a notice accordingly. However, such course of action was not adopted by the Assessing Officer. Therefore, it was contended that with regard to filing of tax-paid certificates by the Coffee Board/Auctioneers, no proposal was issued and they were not called upon to produce the same at any point of time and after the assessment orders were received, they have taken steps and all certificates are available with them. Further, it was pointed out that the re-assessment proceedings were completed in a very short time as the notice was issued on 18.06.2003 and they submitted their objections on 07.07.2003 and the assessment orders were passed on 28.07.2003. After mentioning these details, the petitioner enclosed a photocopy of the tax-paid certificates issued by the Coffee Board/Auctioneers and also enclosed a circular issued by the Principal Commissioner and Commissioner of Commercial Taxes, Chennai, dated 28.02.2001, wherein the Assessing Officers have been directed to accept the declarations in statutory forms like C, E-I, E-II and F, even after the final assessment and revise the assessments under Section 55 of the TNGST Act, 1959, and the same principle is applicable to their case as well and requested to accept the tax payment certificates, rectify and revise the assessment under Section 55 of the TNGST Act, 1959. This representation was followed by reminders. Though such a request

was made, no orders were passed to revise the assessment and since the steps were taken to recover the taxes, the petitioner has moved these writ petitions.

4. In the counter affidavit, apart from dealing with the issue relating to limitation, with regard to the tax-paid certificates issued by the Coffee Board/Auctioneers, the respondent has taken a stand that such certificates are not germane to the issue involved and the petitioner's sale being inter-state sale, is exigible to the tax.

5. In the considered view of this Court, respondent could not have taken such a stand, because, in the re-assessment order, it has been stated that since the petitioner has not produced the certificates obtained from the Coffee Board / Auctioneers, the transaction is taxed. Therefore, in the absence of any proposal in the re-assessment notice to state that even if there is a certificate, still the transaction is taxable, the respondent cannot take such a stand in the counter affidavit. Furthermore, the respondent cannot ignore the statutory circular issued by the Commissioner and it binds the respondent.

6. Therefore, for the above reasons, this Court is convinced that the respondent has failed to discharge his statutory obligation in considering the petitioner's representation enclosing the tax-paid certificates issued by the Coffee Board / Autioneers. For such reason, the matter requires to be remanded to the respondent for fresh consideration.

7. Accordingly, the writ petitions are allowed and the impugned proceedings are set aside and the matter is remanded to the 1$^{st}$ respondent for fresh hearing, who shall fix the date for personal hearing and on the said date, the authorized representative of the petitioner shall appear before the 1$^{st}$ respondent and produce the tax-paid certificates, after which, the 1$^{st}$ respondent shall consider the same and then to proceed further in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Deputy Commercial Tax Officer,
Gudalur, The Nilgiris.

2.The Principal Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

+1cc to Special Government Pleader (Taxes) sr.51211

+1cc to Mr.Chandran Karuppiah,Advocate sr.51229

W.P.Nos.33310 to 33312 of 2003

ca(co)
ss(5/9/2017)