IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2017

Coram:

THE HON`BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23795 of 2004

and
W.P.M.P.No.288441 of 2004

M/s. M.Y. Leathers
rep. By its Partner M. Mohamed Muneer
1056/A-1, C.N.A. Road, Konamedu,
Vaniyambadi. ...Petitioner

Versus

1. The Deputy Commissioner (CT) Vellore,
Commercial Taxes Buildings,
Fort Round, Vellore.

2. The Deputy Commercial Tax Officer,
Vaniyambadi. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the First Respondent in his proceedings in R.C.A2.3942/2004 dated 12.07.2004 and consequential order of the Second Respondent in TNGST/4641119/01-02 dated 06.08.2004 and quash the same as illegal.

For Petitioner : Mr. S. Ramanathan

For Respondents : Mr. K. Venkatesh,
Government Advocate

ORDER

Heard Mr. S. Ramanathan, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate appearing on behalf of the respondents.

2. The petitioner, who is a registered dealer on the file of the second respondent herein under the provisions of Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred as "the TNGST Act") and Central Sales Tax Act (CST), 1956 is aggrieved

by an order passed by the first respondent exercising his suo moto revisional powers under Section 32(1) of the TNGST Act.

3. It may not be necessary to go into the factual aspects of the matter on the account of lack of jurisdiction, as by the impugned order the respondent has revised the turnover and consequently, demanded higher rate of tax. The correctness of such similar order was tested by the Honourable Division Bench of this Court, in the case of (P. Hajee Mohamed Saliah & Co. Vs. The State of Tamil Nadu) reported in (1983) STC (Mad) 63, wherein, the Court held as follows:

> "The Deputy Commissioner acting under Section 32 of the Tamil Nadu General Sales Tax Act, 1959, has all the powers except the power of enhancement. The power to "pass such order as he thinks fit" will take in the widest possible power excluding the power of enhancement which has to be conferred expressly by the statute. Therefore, the expression "pass such order as he thinks fit" will include a power to modify the order of the subordinate authority by refixing the taxable turnover as a result of the cancellation of the exemption granted by the assessing authority."

4. Thus, the legal issue involved in the Writ Petition is squarely covered by the decision of the Honourable Division Bench, (referred to supra) and the learned Government Advocate for the respondents does not dispute the position and agrees that the issue involved in this Writ Petition is squarely covered by the judgment relied upon by the learned counsel for the petitioner.

5. In the light of the decision of the Honourable Division Bench, referred to above, this Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

mrr

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner (CT) Vellore,
   Commercial Taxes Buildings,
   Fort Round, Vellore.

2. The Deputy Commercial Tax Officer,
   Vaniyambadi.

+1 C.C. to The Special Government Pleader, SR.NO. 71780

+1 C.C. to Mr.S.Ramanathan Advocate SR.NO.71664

W.P.No.23795 of 2004

VS 28.10.2017