IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.17771 of 2006

M/s.Hatsun Foods Company,
(now merged with
M/s.Hatsun Agro Products Ltd.,)
114, Angadu Road,
Nallur Village, Chennai 600 067. ..Petitioner

Vs.

1.The Commercial Tax Officer,
Ponneri Assessment Circle,
Chennai.

2.The Deputy Commissioner (CT),
Chennai (South) Division

3.The Joint Commissioner (CT) (RP)
Ezhilagam, Chepauk, Chennai -5. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus to call for the records of the first respondent in TNGST 1701066/99-2000 and quash the order dated 10.11.2003 and to direct the first respondent to grant exemption on the sale of milk effected by the petitioner.

For Petitioner :: Mr.B.Raveendran

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

O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr. K.Venkatesh, learned Government Advocate for the respondents.

2. The petitioner, who is a registered dealer on the file of the respondent Department under the provisions of the Tamil Nadu General Sales Tax Act, 1959,(TNGST Act in short) is aggrieved by the orders passed by all the respondents refusing to exercise the power under Section 55 of the TNGST Act, to rectify the

mistake pointed out by the petitioner in the order of assessment dated 16.03.2001 for the assessment year 1999-2000 under the provisions of TNGST Act.

3. The first respondent issued a notice dated 02.03.2001 pointing out that (i)on verification of the accounts submitted by the petitioner, there was a difference of Rs.54,247/- between turn over reported and as per accounts and the reasons for variation have not been explained and (ii) on verification of the balance sheet, there is a profit on sale of asset of Rs.11,387/- and it pertains to sale of one freezer and proof of earlier sufferance of tax was not produced. Therefore, the first respondent proposed to revise the total and taxable turn over as Rs.9,35,74,827/-. The petitioner submitter their objections on 13.03.2001 claiming that out of the total turn over as mentioned in the notice dated 02.03.2001, the petitioner is entitled to claim exemption to the turn over of Rs.10,01,668.64 being towards sale of milk and enclosed a cheque for Rs.8,467/- being the tax payable in respect of the remaining turn over, which, according to the petitioner was towards sale of ice-cream at 11%. The first respondent passed the impugned assessment order stating that the petitioner has filed their objection and paid the tax for the difference in turn over for sale of asset. However, there was no reference to the claim made by the petitioner that the turn over to the extent of Rs.10,01,668.64/- is an exempted turn over being towards the sale of milk. This, according to the petitioner, was a mistake apparent on the face of the record and they sought for rectification by their representation dated 27.04.2001, which was not considered followed by another representation dated 07.07.2003, which came to be rejected by the first respondent by a cryptic order dated 10.11.2003 as against which the petitioner preferred an appeal to the second respondent, the first revisional authority, who confirmed the order and the second revision petition was also dismissed by the second revisional authority, namely, the third respondent, by order dated 13.04.2006. These orders are impugned in this writ petition.

4. In my considered view there is an error apparent on the face of the order of assessment owing to the fact that the first respondent did not consider the claim of the petitioner for exemption towards sale of milk. Curiously enough, in parawise comments/instructions given by the first respondent to the learned Special Government Pleader (Taxes), dated 08.03.2006, a calculation has been given and it is stated that the petitioner is not entitled for exemption on the sale of the milk, because what was sold by them was high fat milk purchased by the dealer with fat content over 75% and this high fat milk is nothing but cream and milk and is not covered by the exemption granted under Entry 6 of Part B of third schedule to the TNGST Act, which is available only for fresh milk, Pasteurised and directly

reconstituted milk. However, the stand taken by the 1st respondent in the instructions given to the learned Special Government Pleader (Taxes) does not find place in the pre-assessment notice dated 02.03.2001 or for that matter, in the order of assessment dated 16.03.2001. Thus, it is evidently clear that there is a serious error committed while completing the assessment.

5. Taking note of the fact that the first respondent has now, a fresh set of reasons to deny the claim for exemption, it would be a fit case where fresh notice should be issued to the petitioner and the assessment should be made. Accordingly, this writ petition allowed. The orders passed by the second and third respondents are set aside with a direction to the first respondent to issue a comprehensive show cause notice to the petitioner covering all the issues, afford them opportunity to submit their objections, grant them an opportunity of personal hearing and re-do the assessment in accordance with law. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

nv/sai

To

1.The Commercial Tax Officer,
Ponneri Assessment Circle,
Chennai.

2.The Deputy Commissioner (CT),
Chennai (South) Division

3.The Joint Commissioner (CT) (RP)
Ezhilagam, Chepauk, Chennai -5.

+1cc to Mr.B.Raveendran,Advocate sr.55212

+1cc to Special Government Pleader sr.54983

W.P. No. 17771 of 2006

sks(co)
ss(28/8/2017)