In the High Court of Judicature at Madras

Dated : 17.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24529 of 2004 & WMP.No.29805 of 2004

Tvl.Casio Electricals, Chennai-17. ...Petitioner

Vs

The Commercial Tax Officer,
T.Nagar (North) Assessment Circle,
Chennai. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent herein in TNGST/1521409/99-2000 dated 25.11.2003 and quash the same as illegal, unlawful and unconstitutional.

For Petitioner : Mr.R.Ganesh Khanna for Mr.A.Ravichandran
For Respondent : Mr.K.Venkatesh, GA

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959, is aggrieved by an order passed by the respondent dated 25.11.2003 invoking Section 16 of the said Act. The

said provision deals with assessment of escaped turnover.

3. On a perusal of the assessment order dated 06.12.2000, it is seen that the total turnover has been determined at Rs.10,77,208/-. The taxable turnover has been determined as NIL. However, the Assessing Officer has acknowledged the fact that there is an excess of Rs.9,464/- paid as tax by the petitioner. In these circumstances, it has to be seen as to whether Section 16 of the said Act could be invoked.

4. Admittedly, there is no escapement of turnover, which are to be assessed to tax. Though the power under Section 16 of the said Act would empower the officer to rectify cases where lower rate of tax tax has been adopted, such a contingency does not arise in the instant case, as, even as per the order of assessment dated 06.12.2000, there is an excess of tax to the tune of Rs.9,464/-, which has been remitted by the petitioner. Hence, the impugned order is unsustainable in law.

5. Further, in the written instructions given by the Commercial Tax Officer to the learned Special Government Pleader dated 31.1.2005, it has been stated that upto 12.9.2000, there was no provision under the said Act or the Rules framed thereunder to inform the assessee about the random selection, as Sub-Rule 5B of Rule 15 was introduced only on 13.9.2000 and the assessment in question related to the year 1999-2000. It has been further stated that the petitioner did not respond to the notice dated 21.8.2003 and did not file their objections and that since the petitioner did

not file any details of purchases, verification could not be made.

6. Thus, the stand taken by the respondent appears to be a stand, which cannot be a reason to invoke Section 16 of the said Act, when, admittedly, there is no change in the taxable turnover nor there is any levy of tax less than what should have been actually levied, as there was admittedly excess amount of tax in the hands of the Department.

7. Accordingly, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, the above WMP is closed.

17.7.2017

Internet : Yes

To
The Commercial Tax Officer, T.Nagar (North) Assessment Circle, Chennai.

RS

T.S.SIVAGNANAM,J

RS

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