IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.49739 of 2006 & M.P.No.1 of 2006

M/s.Sri Ramakrishna Mills (CBE) Ltd.,
Rep. By Mr.N.Narasimhalu
- Company Secretary and V.P.(Ping & Fin),
1493, Sathyamangalam Road, Coimbatore. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Fast Track Assessment Circle - I,
Coimbatore ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the Respondent in his proceedings in TNGST 2200007/1998-99 dated 30.10.2006 and quash the same as illegal and contrary to the law.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The petitioner is a limited Company and incorporated under the Companies Act, 1956 and registered on the file of the respondent under the provisions of Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act"). In this Writ Petition, the petitioner has challenged the impugned assessment order passed under the TNGST Act for the assessment year 1998-99. The case of the petitioner is that the respondent has disbelieved the theory as propounded by the petitioner that they had transported goods to their Depot at Velandavalam Branch in Kerala State and treated the transaction as sale done within the State viz., at Thiruppur.

3.It is pointed out by the learned counsel for the petitioner that merely because there is solitary transaction with M/s. Aswinin Exports, Thiruppur, the respondent could not have disbelieved the other transactions duly supported by records. It is further submitted that the generalized theory of disallowing exemption on the entire turnover of branch transfer without independently evaluating each and every transaction is incorrect. In support of such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of TATA Engineering and Locomotive Co., Ltd., Vs. Assistant Commissioner of Commercial Taxes, Jamshedpur and another reported in 1970 Vol XXVI STC 354.

4.At the time when the Writ Petition was admitted on 21.12.2006, an order of interim stay was granted on a condition that the petitioner pays 50% of the tax component. It is submitted that this order has been complied with.

5.Considering the factual matrix involved in this matter and also taking note of the fact that the petitioner has already paid 50% of the disputed tax, this Court is of the opinion that the petitioner can be afforded one more opportunity to go before the Assessing Officer by producing records to substantiate their claim that the transfer were in fact branch transfer. However, for such reason, I do not propose to quash the impugned assessment order, but direct the petitioner to treat the same as a show cause notice.

6.Accordingly, the Writ Petition is disposed of, by directing the petitioner to treat the impugned assessment order as a show cause notice and submit their objections within a period of 30 days from the date of receipt of a copy of this order. The objections should be accompanied with the copies of the relevant records to substantiate their claim. On receipt of the objections along with the annexure, the respondent shall fix a date for personal hearing, consider the objections and pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa/abr

To

The Assistant Commissioner (CT),
Fast Track Assessment Circle - I,
Coimbatore.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.72790

W.P.No.49739 of 2006

BR(CO)
CA(07/11/2017)