IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28351 of 2004
and
WMP.No.34412 of 2004

M/s.Viswanatha oil Mills,
No.2, Thatha Muthiappan Street,
Chennai-600 001. ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Loan Square-I Assessment Circle,
Kuralagam Annexe, 2nd Floor,
Chennai-600 108.

2.The Union Territory of Pondicherry,
rep.by the Secretary,
to Government, Revenue Department,
Union Territory of Pondicherry,
Pondicherry. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the proceedings of the first respondent herein in TNGST/034135/1992-93 on his files, quash the order dated 31.07.2003 made therein as being illegal and ultra vires entry 92-A of List I of the Seventh Schedule to the Constitution of India, and further direct the first respondent to consider the issue relating to transfer of stocks to the consignment transfer agents in the Union Territory of Pondicherry and the claim of concessional rate of tax on inter-state sales on the basis of the declaration forms filed by the petitioner under the provisions of the Central Sales Tax Act, 1956.

For Petitioner : Mr.Ravindran for
M/s. Chandran Karuppiah

For Respondents : Mr.A.P.Srinivas [For R1]
Senior Standing Counsel

O R D E R

Mr.Ravindran, learned counsel appearing for the petitioner submits that they had tried to contact his client, but there was no response and they had sent a written communication to the petitioner and even for the said witten communication, there was no response and therefore, the learned counsel reports no instructions.

2.Heard Mr.Ravindran, learned counsel for the petitioner and heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the first respondent.

3.The petitioner has filed this writ petition challenging the order of assessment under the provisions of Tamil Nadu General Sales Tax Act, 1959 dated 31.07.2003 for the assessment year 1992-93. The major grounds of challenge contended by the petitioner is that:

> "Ground A: When the petitioner reported the turnover relating to the consignment transfers / inter state sales in the returns filed under the Central Act and deposited the applicable taxes, the first respondent has no power or jurisdiction to treat the turnover under the Central Act as liable to be taxed under the local Act.
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> Ground C: The first respondent overlooked the fact that the petitioner discharged the burden of proof cast on them by producing the declaration forms and the lorry receipts, as contemplated under the provisions of the Central Act. The same cannot be overlooked on the ground that the seal of the checkpost is not found in the transport documents, which is not a stipulation contained in any of the provisions of the Central Act.
>
> Ground E: The first respondent ought to have seen that once the goods are handed over to the carriers, the responsibility of the petitioner ends and the route by which the goods are moved to the other states is not the concern of the petitioner."

4.It is further submitted that since the turnover has been culled out from the books of accounts produced by the petitioner, the question of levy of penalty does not arise.

5.On perusal of the impugned assessment order, the Assessing Officer has given elaborate reasons as to why the proposal made by him in the revision notice requires to be confirmed. To examine the correctness of the reason assigned by the first respondent in the impugned assessment order, it would be necessary to go into the factual matters. Most of which is disputed by the petitioner. This exercise cannot be done in a writ petition.

6. This Court is conscious of the fact that the writ petition is of the year 2004 and it has been held in catena of decisions that when the matter is pending before the Court for a very long period, it would be very harsh on the party to be asked to avail the alternate remedy.

7. However, in this case, I have no other option because of disputed facts which have been raised in this writ petition, which need to be adjudicated and this cannot be done in a writ petition.

8. Therefore, I am constrained to hold that the petitioner has to necessarily avail the alternate remedy provided under the Act.

9. For all the above reasons, it is held that the writ petition is not maintainable. The petitioner has to necessarily avail the alternate remedy. In the result, the writ petition is disposed of by giving liberty to the petitioner to file an appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order.

10. If such appeal is filed, then the Appellate Authority shall take the appeal on file without reference to limitation. It is made clear that this Court has not gone into the factual aspects and it is for the appellate authority to consider all the issues that are raised before him.

11. Accordingly, the writ petition stands disposed of. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

sk/maya
To

1.The Deputy Commercial Tax Officer,
Loan Square-I Assessment Circle,
Kuralagam Annexe, 2nd Floor,
Chennai-600 108.

2.The Secretary to Government of Pondicherry,
Revenue Department,
Union Territory of Pondicherry,
Pondicherry.

3. The Section Officer,
ER Section,
High Court, Madras

1 cc to Spl. G.P(Taxes), Sr. 72068

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