IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29162 of 2004
and
WMP.No.35400 of 2004

M/s.Sharcstar Communications Ltd.,
rep.by its Managing Director,
R.Manoharan,
No.1, Peelamedu Industrial Estate,
Peelamedu, Coimbatore-641 004. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Department of Commercial Taxes and
Religious Endowments, Fort St.George,
Chennai-600 009, Tamil Nadu.

2.The Union of India,
Rep. by the Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.

3.The Commercial Tax Officer,
Peelamedu North Circle,
Coimbatore, Tamil Nadu.

4.The State of Karnataka,
Rep.by the Secretary to Government,
Department of Revenue,
Bangalore, Karnataka,

5.The State of Kerala,
Rep.by its Secretary,
Department of Revenue,
Thiruvananthapuram, Kerala ... 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 impugned proceedings of the third respondent herein in CST: 643378/1999-2000 on his file, quash the proceedings dated 16.09.2004 passed therein, and further direct the third respondent to grant exemption to the petitioner in respect of transfer of stocks to their branches in the State of Kerala and Karnataka under Section 6-A of the CST Act, 1956.

For Petitioner : Mr.Ravindran

For Respondents : Mr.S.Kanmani Annamalai [For R1 & R3]
Additional Government Pleader
Mr.S.Namonarayanan [For R2]
Central Government 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.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of respondents 1 and 3 and heard Mr.S.Namonarayanan, learned Central Government Standing Counsel for Union of India.

3. The petitioner has impugned the order of assessment under the provisions of Central Sales Tax Act, 1956 dated 16.09.2004. The petitioner has challenged the impugned assessment order by contending that the third respondent, their Assessing Officer was wrong in holding that the goods received by the branch were sold on the same day, warranting rejection of claim of exemption on stock transfer. Further, the 3rd respondent failed to follow the orders passed by the second appellate authority who has considered the very same issue.

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 3rd 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. 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.

6. 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.

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

8. 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.

9. If the 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 issues that have raised by him.

10. 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 Secretary to
Government, Department of Commercial
Taxes and Religious Endowments, Fort St.George,
Chennai-600 009, Tamil Nadu.

2.The Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.

3.The Commercial Tax Officer,
Peelamedu North Circle,
Coimbatore, Tamil Nadu.

4.The Secretary to Government,
The State of Karnataka,
Department of Revenue,
Bangalore, Karnataka,

5.The Secretary,
State of Kerala,
Department of Revenue,
Thiruvananthapuram, Kerala.

1 cc to Spl. government Pleader, Sr. 72071

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KGK (CO)
kk 16/11