IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.1498 & 1499 of 2011
and M.P.No.1 of 2011

B.R.Shankar .. Petitioner in both W.Ps.

vs.

The Commercial Tax Officer,
Gugai Assessment Circle,
Salem. .. Respondent in both W.Ps.

Prayer in both W.Ps.: Writ petitions filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the file of the respondent in CST No.405483/2007-2008 and 2006-2007 dated 30.11.2010 and quash the same.

For Petitioner : Mr.R.Senniappan
(In both W.Ps.)

For Respondent : Mr.M.Hariharan
(In both W.Ps.) Addl.Govt.Pleader.

C O M M O N O R D E R

These writ petitions have been filed to issue a writ of Certiorari to call for the records on the file of the respondent in CST No.405483/2006-2007 and 2007-2008 dated 30.11.2010 and quash the same.

2. According to the petitioner, the petitioner was effected inter-state sales of old empty wooden reels for a turn over of Rs.9,18,048/- during the year 2007-2008 for which, he filed 'C' forms before the respondent. As per the order of the assessment, the turn over in question were assessed the tax at the rate of 4% instead of 3% prescribed under Section 8(1) of CST Act.

3. It is further submitted that as per the second proviso to Rule 2(1) of CST (R & T) Rules 57, a single declaration in form 'C' may cover all transactions of sale taken place in a quarter of a financial year. Such requirement would be a

directory one and it cannot be construed to be mandatory and the same is also referred in the decision of this Court reported in (1993) 90 STC 129, Bimetal Bearings Ltd., vs. State of Tamil Nadu.

4. The learned Additional Government Pleader appearing for the respondent would fairly stated that the petitioner has not filed any objection and submitted his explanation before the authority concerned.

5. Considering the submissions made by both sides, the petitioner has not submitted his objection before the concerned authority and therefore to place all the relevant documents as well as the decision of this Court.

6. By taking note of the aforesaid decision cited supra and in view of the above said fact, this Court is inclined to pass the following orders:

i) the impugned assessment order passed by the respondent in CST No.405483/2006-2007 and 2007-2008 dated 30.11.2010, is hereby quashed and the same is remitted to the respondent, to consider afresh.

ii) The writ petitioner shall submit his objections before the authority within a period of two weeks from the date of receipt of a copy of this order.

iii) Thereafter, the respondent is directed to pass orders on merits afresh and accordance with law after providing an opportunity to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

iv) the petitioner is directed to co-operate for enquiry before the respondent.

7. Both the writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

kkd

To

The Commercial Tax Officer,
Gugai Assessment Circle,Salem.

+1cc to Mr.R.Senniappan, Advocate SR.No.82772

+1cc to Special Government Pleader (Taxes)SR.No.82715

W.P.Nos.1498 & 1499 of 2011
and M.P.No.1 of 2011

RK(CO)
GMY(25/01/2019)