In the High Court of Judicature at Madras

Dated : 18.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.9518 to 9522 of 2018
and WMP.Nos.11421 to 11425 of 2018

M/s.Sri Jaya Shree Food Products, rep.by its Authorized Signatory Mr.K.M.S.Rajesh Kumar ...Petitioner

Vs

1.The Assistant Commissioner (ST), Bazaar Assessment Circle, Salem.

2.The Commercial Tax Officer (Enf) Group II, Salem.

3.The Commissioner of Commercial Taxes, Ezhilagam, Chennai-5. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the first respondent in TIN 33762782361/2012-13, TIN 33762782361/2013-14, TIN 33762782361/2014-15, TIN 33762782361/2015-16 and TIN 33762782361/ 2016-17, all dated 27.3.2018 and quash the same as ultra vires of the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondents. Heard both. In the light of the glaring errors, which are apparent on the face of the impugned orders dated 27.3.2018 for the assessment years 2012-13 to 2015-16 and the pre-assessment notice dated 27.3.2018 for the assessment year 2016-17, the writ petitions are taken up for joint disposal.

2. The first respondent issued notices dated 12.10.2017 for the assessment years 2012-13 to 2016-17 referring to a report submitted by the of the Enforcement Wing officials, who

conducted an inspection in the petitioner's place of business on 05.10.2017 and 18.1.2017 on the ground that the petitioner sold 'ready to eat sweet corn', which is liable to tax at the rate of 4% upto 11.7.2011, 5% from 12.7.2011 to 30.9.2013 and 14.5% from 01.10.2013 and therefore, the claim made by the petitioner was not admissible. In the said notices dated 12.10.2017, the petitioner was directed to submit their objections within 15 days.

3. It is to be pointed out at this juncture that in the said notices dated 12.10.2017 for the assessment years 2012-13 to 2016-17, there was no proposal made by the first respondent for levy of penalty. For each of the revision notices, the petitioner filed their objections dated 25.11.2017 separately, in which, the petitioner relied upon the circular issued by the Commissioner of Commercial Taxes dated 09.8.2007 wherein a request was made for clarification with regard to rate of tax for the sale of processed and frozen green peas and corn kernels, with or without the brand name. The Commissioner of Commercial Taxes clarified that the processed and frozen green peas and corn kernels with or without the brand name are taxable at 4% vide Entry No.107 of Part B of First Schedule to the Tamil Nadu Value Added Tax Act, 2006 with effect from 01.1.2007.

4. Based on the said circular, the petitioner requested the first respondent to consider their claim and drop the proposal. The other defects, which were pointed out in the respective notices, were also explained. However, the first respondent passed the impugned assessment orders for the years 2012-13 to 2015-16 and the only reason given in the impugned orders is that the petitioner has sold 'ready to eat sweet corn' and by referring to the report of the Inspecting Officials, the first respondent stated that the petitioner has not produced any recorded evidence to prove that they sold 'raw corn' only.

5. The first mistake committed by the Assessing Officer is that she is solely guided by the report of the Enforcement Wing Officials. Repeatedly, Courts have held that the Assessing Officer, being an independent Statutory Authority, cannot be solely guided by the report of the Enforcement Wing Officials or their superior officers. After considering the objections, this has not been done by the Assessing Officer, thus making the impugned orders for the assessment years 2012-13 to 2015-16 liable to be set aside.

6. The second mistake committed by the Assessing Officer is that she has not even referred to the circular issued by the Commissioner of Commercial Taxes dated 09.8.2007. The circular is binding upon the first respondent and the Hon'ble Division Bench of this Court in the case of Mohan Breweries and Distilleries Limited Vs. CTO, Porur Assessment Circle, Chennai and others [reported in 139 STC 477] held that the circulars issued under Section 28A of the Tamil Nadu General Sales Tax Act are binding on the Authorities and even if the Authorities want to withdraw the same, it can be done only prospectively.

7. The third mistake committed by the Assessing Officer is in levying penalty for the assessment years 2013-14 to 2015-16, as there was no proposal in the relevant revision notices dated 12.10.2017. In so far as the assessment year 2016-17 is concerned, even though the first respondent issued the notice dated 12.10.2017, she has not completed the assessment, but issued a fresh assessment notice dated 27.3.2018.

8. With regard to the defect pertaining to sale of waste corn, the learned counsel for the petitioner submits that when the first respondent admitted that the petitioner is selling corn, obviously, the waste corn is to be sold as a cattle feed only and requests that one more opportunity may be granted to the petitioner to go before the Assessing Officer and place all the materials to establish their stand. With regard to other defects, which have been pointed out, the learned counsel for the petitioner, on instructions, submits that the tax, as quantified by the first respondent, will be paid.

9. The said submission of the learned counsel for the petitioner is recorded.

10. Accordingly, W.P.Nos.9518 to 9521 are allowed and the corresponding impugned orders dated 27.3.2018 for the assessment years 2012-13 to 2015-16 are set aside in so far as they relate to the rate of tax in respect of 'sale of corn' and 'sale of waste corn'. Consequently, the orders imposing penalty for the assessment years 2013-14 to 2015-16 and levying interest for the assessment years 2013-14 and 2014-15 are also set aside. With regard to other issues, other than the above two issues, the petitioner is directed pay the tax liability. Accordingly, the matters are remanded to the first respondent for a fresh consideration. Coming to W.P.No.9522 of 2018 in respect of the assessment year 2016-17, since it is only in the pre-assessment notice stage, the writ petition is disposed of with a direction to the petitioner to submit their objections. The first respondent shall take note of the circular relied upon by the petitioner and other related materials, which the petitioner may place and consider the explanation to be filed by the petitioner to the pre-assessment notice dated 27.3.2018 for the assessment year 2016-17, afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To
1.The Assistant Commissioner (ST), Bazaar Assessment Circle, Salem.
2.The Commercial Tax Officer (Enf) Group II, Salem.
3.The Commissioner of Commercial Taxes, Ezhilagam, Chennai-5.

+1cc to Mr.Mr.V.Sundareswaran, Advocate, S.R.No.28669
+1cc to the Special Government Pleader, S.R.No.29233

W.P.Nos.9518 to 9522/2018 &
WMP.Nos.11421 to 11425/2018

nr 17/05/2018