IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.21614 of 2018
and
W.M.P.No.25375 of 2018

Arunnachala Impex Private Limited
Represented by its Managing Director
S.Kalaivani
No.192/237, Thamby Chetty Street
Parrys, Chennai-
600001 ... Petitioner

vs.

Commercial Tax Officer
Harbour Assessment Circle,
No.116, Angappa Naicken Street
Chennai - 600001.
... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN 33250021294/2009-2010 dated 25.07.2018 and quash the same, and further direct the respondent to redo the assessment by considering the reply dated 28.12.2017 in respect of non-liability to tax on the exempted goods even if there is difference on exempted Turnover as per the balance sheet and monthly returns in accordance with law.

For Petitioner : Mr.N.Murali

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

This writ petition is filed challenging the order of assessment dated 25.07.2018, passed in respect of assessment year 2009-10.

2. Heard both sides.

3. The Assessing Officer issued pre-revision notice dated 20.11.2017 and called upon the petitioner to file their objections on the proposed sales turnover, based on purchase difference between balance sheet and the monthly returns. According to the Assessing Officer, there is a turnover difference of Rs.3,93,40,401/-, based on verification of audited balance sheet and the monthly returns. The petitioner disputed such claim and filed their reply dated 28.12.2017, by contending that while preparing the balance sheet, the amount pertaining to the expenses relating to purchases, such as loading and unloading charges, packing materials and charges were wrongly noted and on the other hand, all the purchases and sales are relating to pulses and grams and the same is exempted from tax under Entry No.68 of Part-B of Fourth Schedule to the TNVAT Act, 2006. The Assessing Officer, after considering the above reply and also giving an opportunity of personal hearing to the petitioner, passed the impugned order, fixing the tax liability of Rs.56,55,183/- and also by imposing penalty at 150% of Rs.84,82,774/-.

4. The grievance expressed before this Court against the said order of assessment is that there was no real suppression of sales pertaining to the said sum of Rs.3,93,40,401/-, and it was due to some mistake committed in the balance sheet. It is further submitted that even otherwise, as those sales were pertaining to the pulses and grams, which are exempted from the tax as stated supra, the respondent is not entitled to impose tax on such exempted sales.

5. On the other hand, the learned Government Advocate submitted that even in respect of exempted sales, the petitioner is bound to show such sales in the return filed by them and if the disputed quantum of sale is not disclosed in the return, it has to be construed that the petitioner has suppressed such quantum of sale only for the purpose of evading the tax. In other words, it is their contention that nothing prevented the petitioner from showing the disputed quantum of sale also along with quantum of sale shown in the return representing the exempted sales.

6. I have given my careful consideration to the rival submissions made by the parties.

7. There is no dispute to the fact that the impugned order of assessment was passed after issuing notice to the petitioner and also by considering the objections raised by them and also by giving an opportunity of personal hearing. The issue involved in this case is with regard to difference in turnover to the tune of Rs.3,93,40,401/-. Whether such turnover represents the exempted sale as claimed by the petitioner or not is certainly a factual aspect of the matter, which has to be considered and decided only by the next fact finding Authority. If the petitioner is aggrieved against the findings rendered by the Assessing Officer, which according to them is not after

considering the objections raised by the petitioner, it is always open to the petitioner to file the statutory appeal before the next fact finding authority, so that such authority will consider the objections raised by the petitioner and pass appropriate orders on merits and in accordance with law.

8. Therefore, this Court, at this stage, is not expressing any view on the merits of the contentions raised by both the parties. Accordingly, this writ petition is disposed of, by granting liberty to the petitioner to file an appeal before the first Appellate Authority within a period of two weeks from the date of receipt of a copy of this order, by complying with all statutory requirements. If any such appeal is filed within the time stipulated therein, the Appellate Authority shall consider the same and pass orders on merits and in accordance with law, without referring to the period of limitation. Till the appeal is filed as stated supra and within the time stipulated, the respondents are directed not to take any coercive steps against the petitioner to recover the disputed tax and penalty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni

To
Commercial Tax Officer
Harbour Assessment Circle,
No.116, Angappa Naicken Street
Chennai - 600001.

+1cc to Mr.N.Murali, Advocate sr.no.69025
+1cc to Special Government Pleader(Taxes) sr.no.68965

W.P.No.21614 of 2018

kan(co)
nr 29/10/2018