IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1124 of 2009 and M.P.No.2 of 2009

Indian Overseas Bank,
Rep. by its Chief Manager and
Constituted Attorney,
No.763, Anna Salai,
Chennai-600 002. ... Petitioner

-vs-

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Sire Mansion, I Floor,
No.621, Anna Salai, Chennai-600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the entire records of the second respondent herein in TNGST / 0640474/2006-2007 and to quash the order passed therein dated 19.12.2008.

For Petitioner : Mr.A.P.Srinivas,
for Mr.F.B.Benjamin George

For Respondents: Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

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O R D E R

Heard Mr.A.P.Srinivas, learned counsel representing Mr.F.B.Benjamin George, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondents.

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2. The petitioner is M/s.Indian Overseas Bank, and they have challenged the revision of assessment passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") for the assessment year 2006-07 dated 19.12.2008. Broadly two issues arise for consideration viz., as to whether the gold coins, which are dealt by the petitioner have to be treated as different from gold bullion . The second issue is with regard to the rate of tax, which is payable by the petitioner on the sale of these gold items.

3. In my considered view, the issue relating to classification as well as rate of tax are not pure questions of law, but mixed questions of fact and law. The factual matrix has to be definitely gone into, which obviously cannot be done in a writ petition. The Court is conscious of the fact that the writ petition is pending since 2009. Nevertheless, the Court cannot embark upon a fact finding exercise as to what is the nature of product dealt by the petitioner, how it is different from gold bullion and what would be the rate of tax payable on the sale of such items. This issue has to be necessarily dealt with by the Appellate Authority. Therefore, this Court is inclined to relegate the petitioner to avail the appeal remedy provided under the Act. The petitioner had the benefit of an order of interim stay from the date when the writ petition was filed and the same was made absolute on 30.07.2010. Hence, the order of stay should continue till the appeal is disposed of by the Appellate Authority.

4. The learned Government Advocate pointed out that to enable the petitioner to avail the appeal remedy, pre-deposit of the disputed tax is required to be made. In my considered view, the case on hand can be treated as an exceptional case and relief can be granted to the petitioner to pursue the appeal remedy without effecting pre-deposit, since the petitioner is a nationalized bank and cannot be treated on par with a normal dealer, who is registered under the provisions of the TNGST Act. Thus, considering the exceptional circumstances in this case, this Court is inclined to issue the following direction.

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5. Accordingly, this writ petition is disposed of by directing 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 and if the appeal is filed, the Appellate Authority shall entertain the same without rejecting the same on the ground of limitation. The Appellate Authority shall not insist upon any pre-deposit for the reasons assigned

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by this Court in the preceding paragraph taking note of the fact that the petitioner is a nationalized bank. The order of stay of the impugned demand, which was granted by this Court and made absolute on 31.07.2010 shall continue till the disposal of the appeal. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Sire Mansion, I Floor,
No.621, Anna Salai, Chennai-600 006.

+ 1 cc to Mr.Special Government Pleader Sr.37992

W.P.No.1124 of 2009

(CS-dr)
EU(26/06/2018)

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