IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.SIVAGNANAM

W.P.Nos.33230 to 33232 of 2013
and M.P.Nos.1, 2, 1 and 1 of 2013

M/s.Sakthi Met-Dor Limited
Rep.by its senior manager
Mr.V.Venkatesan
No.5/8 Dev A I Main Road,
Kasthuribai Nagar, Adayar,
Chennai 600 020. ... Petitioner in all W.Ps.

..Vs..

Assistant Commissioner (CT) (FAC),
Valluvarkottam Assessment Circle,
Sire Mansion, No.621, Annasali,
Chennai 600 006. ... Respondent in all W.Ps.

Prayer in W.P.No.33230 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the impugned proceedings of the respondent passed in TIN/33181501698/2006-07 dated 31.10.2013 and to quash the same.

Prayer in W.P.No.33231 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the impugned proceedings of the respondent passed in TIN/33181501698/2007-08 dated 31.10.2013 and to quash the same.

Prayer in W.P.No.33232 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the impugned proceedings of the respondent passed in TIN/33181501698/2008-09 dated 31.10.2013 and to quash the same.

For Petitioner in all W.Ps. : Mr.N.Murali
For Respondent in all W.Ps. : Ms.G.Dhana Madhri
Government Advocate

COMMON ORDER

Heard Mr.N.Murali, learned counsel appearing for the petitioner and M/s.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

2.The petitioner has challenged the assessment orders passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as TNGST Act) for the assessment year 2005-2006 and assessment orders passed under the provisions of the Tamil Nadu Value Added Tax, 2006, (hereinafter referred to as TNVAT Act) for the assessment years 2007-2008 and 2008-2009. The only issue which falls for consideration is whether the petitioner assessee having exercised the option for payment of tax at compounded rate under Section 7C of the TNGST Act and Section 6 of the TNVAT Act and paid tax at the rate of 4%, can such assessment orders be revised. This issue is no longer res integra and has been settled by this Court in favour of the assessee in the case of Sinetech Vs. Commercial Tax Officer, Korattur, (2008) 15 VST 398 (Mad). The operative portion of the order reads as follows:

> "7.A Division Bench of this Court in 47 STC 264 Deputy Commissioner of Commercial Taxes, Vellore v. Devendran & Co.[1981] 47 STC 264 dealt with the application of Section 16 of the TNGST Act wherein it was held that if earlier assessment is made on a particular percentage and subsequently, if the assessing authority wanted to reopen the assessment by taking away part of the sales turn over from the turn over already assessed for finding out the corresponding purchase turn over of raw hides and skin and subject it to a tax at 13% by invoking Section 16 of the TNGST Act, the same power is not available to the authorities. The funding of the Tribunal was affirmed by the Division Bench in the following lines:
>
> "In this case, as we pointed out already and as admitted, the entire sales turnover relating to the tanned hides and skins had been assessed at 1-1/2 per cent under item 7(b) and the sales turnover was assessable only under that item. Only if the whole or any part of this turnover had escaped such assessment, the whole or any part of the turnover can be said to have been assessed at a lower than the rate at which the same was assessable so as to attract the provisions of Section 16(1)(b). That not being the case, the order of the Tribunal cannot be said to be erroneous in law and consequently the tax revision case is dismissed."
>
> The said judgment was affirmed by the Supreme Court in State of Tamil nadu v. Devendran & Company [1996] 103 STC 95.
>
> 8.The learned Counsel also produced the work

order issued by Indian Oil Corporation in favour of the petitioner, which was also submitted to the respondent. Therefore, the only question that remains for consideration is whether the respondent had power under Section 16 of the TNGST Act to reopen the assessment on the basis of the judgment of the Supreme Court in State of Andhra Pradesh vs. Kone Elevators (India) Ltd., (2005) 140 STC 22. The reliance placed upon the said judgment of the Supreme Court in Kone Elevators case [2005] 140 STC 22 is totally misconceived as in the present context, the petitioners have agreed to compound rate by paying the tax in terms of Section 7C of the TNGST Act and also filed the returns in Form A-1. In such a case, the question of revising the compounding order does not arise especially when a dealer is exercising option in payment of rates in compound rate and the petitioner was also made to pay tax at 4% on the entire contract value. Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner dealer.

9.In the light of the above and in view of the judgment of the Supreme Court in Devendran and Company case [1996] 103 STC 95, the writ petition will stand allowed. The impugned order dated 13.7.2007 will stand set aside. No costs. Connected Miscellaneous Petition is closed."

3.The above decision has been affirmed by the Division Bench of this Court in the case of Commercial Tax Officer Vs. Sinetech in Writ Appeal No.1536 of 2010 dated 04.07.2017. In the light of the above, the impugned proceedings are held be without jurisdiction and accordingly, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dna

To

The Assistant Commissioner (CT) (FAC),
Valluvarkottam Assessment Circle,
Sire Mansion, No.621, Annasali,
Chennai 600 006.

+3cc to Mr.N.Murali, Advocate, S.R.No.1547

+1cc to the Government Pleader, S.R.No.1683

W.P.Nos.33230 to 33232 of 2013

NRJK(CO)
RRK(05/02/2018)