IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

T.C.(R) No.173 of 2009

M/s.Suriya Chemical Products
Rep. By Ms.R.Anandhi
Proprietrix
B-14 (Old No.B-120)
Anna Nagar East
Chennai – 600 102. .. Petitioner

Vs

The State of Tamil Nadu
Rep. by the Deputy Commissioner (CT), Chennai
(Central Division)
Chennai – 6. .. Respondent

Prayer : Tax Case Revision filed under Section 38 of Act I of 1959 to revise the order of the Sales Tax Appellate Tribunal (Main Bench), Chennai-104, dated 21.01.2004, passed in S.T.A.No.581/2002

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.V.Haribabu
Additional Govt. Pleader (Tax)

ORDER

[Order of the Court delivered by T.S.SIVAGNANAM,J.]

Heard Mr.V.Srikanth, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Tax) appearing for the respondent.

2. This tax case revision has been filed by the petitioner against the order dated 21.01.2004 passed by Sales Tax Appellate Tribunal (Main Bench), Chennai, in S.T.A.No.581/2002.

3. The petitioner-company has submitted his return for the Assessment Year 1992-1993 and the Assessing Officer has issued demand notice to the petitioner fixing tax and penalty amount vide his order dated 26.02.1999. Agggrieved over which, the petitoner-company has preferred an appeal in AP.No.180 of 1999 before the Appellate Assistant Commissioner (CT) VI, Chennai. The Appellate Authority vide his order dated 16.05.2001, has allowed the appeal and remanded the matter to the Assessing Officer for fresh consideration. This was challenged by Revenue and it preferred an appeal before the Tamil Nadu Sales Tax Appellate Tribunal in S.T.A.No.501 of 2002 and vide its order dated 21.01.2004, the Tribunal had allowed the appeal filed by the State. This order of the Tribunal is now challenged by the petitioner-company in this tax revision case.

3. This Tax Case Revision has been admitted on the following substantial question of law :

"Whether in the facts and circumstances of the case, the Tribunal is correct in law in not deciding the point of limitation, when this point was argued with reference to the date of service of the order passed by the First

Appellate Authority?"

4. Before going into the issue whether the question of law falls under consideration or not, we have to point out that the order passed by the Appellate Assistant Commissioner (CT) VI, Chennai, dated 16.05.2001 in and by which, the appeal filed by the assessee in AP.No.180/99 was allowed and remanding the matter to the Assessing Officer for fresh consideration to decide the factual issue as to whether the proprietorship business was transferred by the proprietrix to the buyer, Sumanth Sharma on 27.11.1992, is just and proper?

5. We fail to understand as to why the Revenue has to file such an appeal before the Tribunal challenging the order dated 16.05.2001 passed by the Appellate Assistant Commissioner (CT) VI, Chennai.

6. Be that as it may, defending the appeal filed by the State before the Tribunal, the assessee had filed its counter affidavit and written submissions contending that the appeal is barred by limitation.

7. Though this issue was specifically pleaded by the assessee, we find that the Tribunal had not gone into the said aspect, which the assessee contends, but went again to examine the merits of the matter stating that the Power of Attorney of the dealer has filed the returns after the date of sale i.e., on 27.11.1972.

8. In our considered view, the Appellate Tribunal should not have intereferred with the order passed by the Appellate Assistant Commissioner (CT) VI, Chennai, who remanded the matter to the Assessing Officer to consider the claim of the assessee. Thus, we find that the question of law framed in this revision does not arise for consideration and that the Tribunal had fallen in error, in intereferring with the order passed by the Appellate Assistant Commissioner (CT) VI.

9. In the result, this tax case revision is allowed and the order passed by the Sales Tax Appellate Tribunal dated 21.01.2004, passed in S.T.A.No.581/2002 is set aside and the order passed by the Appellate Assistant Commissioner (CT) VI, Chennai, in AP.No.180/99 dated 16.05.2001 is restored to its file. The Assessing Officer is directed to comply with the directions issued by the Assistant Commissioner (CT) VI, Chennai after issuing notice to the petitioner and also affording an opportunity of personal hearing. No Costs.

[T.S.S.J.,] [N.S.S.J.,]

25.06.2018

ds

Index : Yes / No

Speaking Order / Non-speaking Order

To:

The Joint Commissioner (III) SMR of Commercial Taxes
Office of the Special Commissioner &
Commissioner of Income Taxes
Chepauk
Chennai – 600 005.

T.S.SIVAGNANAM,J.,
and
N.SESHASAYEE,J.,

ds

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