In the High Court of Judicature at Madras

Dated : 06.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

WP.No.1166 of 2006
&
W.M.P.Nos.1295 and 1296 of 2006

Mas Enterprises Limited
Rep. By its Joint Managing Director
K.Venkatraman
25, Gandhiji Street
Cumbum ...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. By the Secretary to Government
Commercial Taxes Department
Secretary, Fort. St.George
Chennai- 600 009

2.The Deputy Commissioner
(Commercial Taxes - Enforcement)
Commercial Taxes Buildings
Dr.S.V.K.S Thangaraj Salai
Post Box No.32, Madurai

3.The Deputy Commercial Tax Officer
Office of the Commercial Tax Officer
Uthamapalayam ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records in respect of the Letter No.15812/D2/2002-17 dated 13.08.2004 issued by the first respondent and quash the same as illegal unconstitutional and consequently direct the 1st respondent to review its Letter No.15812/02/2002-17 dated 13.08.2004 and waive the sales tax liability upon the petitioner, under Section 17(4) of the Tamil Nadu General Sales Tax Act for the auctions effected by the petitioner for the period 11.04.2000 to 19.04.2000.

For Petitioner : Ms.S.Janaki
for Mr.R.Parthasarathy

For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Heard Ms.S.Janaki, learned counsel appearing on behalf of Mr.R.Parthasarathy, learned counsel on record for the petitioner and Mr.G.Dhanamadhri, learned Government Advocate, appearing for the respondents.

2. The petitioner has filed this writ petition challenging the proceedings of the Government dated 13.08.2004, by which the request made by the petitioner for waiver of Sales Tax on Sale of Cardamom during the period 11.04.2000 to 25.04.2000 was rejected as not feasible of compliance.

3. Identical impugned order was put to challenge by the Kerala Cardamom Processing and Marketing Company Limited in W.P.No.34881 of 2004 and this Court, by order dated 29.06.2016, allowed the writ petition with certain directions. The operative portion of the order reads as follows:

> "3. The case of the petitioner itself is that till 10.04.2000, Cardamom was taxable at the point of last purchase and by virtue of G.O.Ms.No.68, Commercial Taxes dated 11.04.2000, incidence of tax liability was shifted to:- a) at the point of first purchase within the State and b) at the point of first sale not falling under clause (a) alone i.e., the point of first purchase. Thus the incidence of tax liability had been shifted as stated above. This Government order was passed on 11.04.2000, but was made available to the petitioner only on 26.04.2000, through the Commercial Tax Officer (FAC), Bodinayakanur, Theni District and after the said date i.e., 26.04.2000, the petitioner has been remitting the tax in accordance with the Government Order. The petitioner has sought

for waiver only for the period from 11.04.2000 to 25.04.2000 as there was no liability of tax since the incidence of the tax was on the last purchase in Tamil Nadu. Though such a contention was raised, since the same was not considered, the Court set aside the same and remitted the matter for fresh consideration. Yet the first respondent, without proper application, has rejected the petitioner's request by a cryptic and non-speaking order. The petitioner, to substantiate their contention, had referred to the minutes of the meeting held by the Deputy Commissioner of Commercial Taxes at Madurai, who has also made certain recommendations to the Government and it appears that the Deputy Commissioner of Commercial Tax assured in the meeting to recommend the case of the petitioner for waiver of tax for the said period. That apart, elaborate representation was also made by the petitioner. Without considering all these aspects, the respondent has rejected the petitioner's representation in a most arbitrary manner. In fact, the manner in which the order has been passed would amount to disobedience of the direction issued by this Court in the earlier writ petition.

In the light of the above, the writ petition is allowed and the impugned order dated 13.08.2003 is quashed and the matter is remanded to the first respondent for fresh consideration. The first respondent is directed to call for necessary files from the Office of the Deputy Commissioner, afford an opportunity of personal hearing to the petitioner and thereafter, pass a speaking order on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed."

3. The learned Government Advocate pointed out that as against the order of assessment, the petitioner had preferred an appeal before the First Appellate Authority and the appeal was partly allowed and the revenue preferred appeal before the Tribunal, which appeal has been allowed by the Tribunal.

4. In my considered view, even if the appeal has been allowed, the relief sought for by the petitioner in the instant case is waiver of Sales Tax on the sale of Cardamom. Therefore, it is open to the Government to take a decision in the matter.

5. Thus, following the order in W.P.No.34881 of 2004, as the same would squarely cover the case on hand also, this writ petition is allowed and the impugned order dated 13.08.2004 is quashed and the matter is remanded to the first respondent for fresh consideration. The first respondent is directed to call for necessary files from the Office of the Deputy Commissioner, afford an opportunity of personal hearing to the petitioner and thereafter, pass a speaking order on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa/msrm
To

1. The Secretary to Government
Commercial Taxes Department
Secretary, Fort. St.George
Chennai- 600 009

2.The Deputy Commissioner
(Commercial Taxes - Enforcement)
Commercial Taxes Buildings
Dr.S.V.K.S Thangaraj Salai
Post Box No.32, Madurai

3.The Deputy Commercial Tax Officer
Office of the Commercial Tax Officer
Uthamapalayam

+1cc to Mr.R.Parthasarathy, Advocate Sr.43976
+1cc to the Special Government Pleader Sr.44176

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srg 17/07/2018