IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.18698 and 18699 of 2018
and
W.M.P.Nos.22050 and 22051 of 2018

N.Raja, Present Proprietor of
Tvl.Sengpttaiah Sago Factory,
D.No.25, Thippampatti Post,
Panamarathu Patti via.,
Salem-636 203. ... Petitioner in both W.Ps.

-vs-

1.The Assistant Commissioner (ST),
Salem Rural Circle, Salem.

2.The Commercial Tax Officer,
Salem Rural Circle, Salem. ... Respondents in both W.Ps.

Prayer in W.P.No.18698 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the files of the second respondent herein in TNGST Asst.No.2700593/2005-2006 dated 31.01.2012, quashing the same as illegal, void and contrary to the judgement in Ponni Sago Factory vs. Deputy Commercial Tax Officer, Salem and Others (2007) 5 VST 223 (Mad) of this Court.

Prayer in W.P.No.18699 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondent herein to rectify his assessment in TNGST Asst.No.2700593/2005-2006 dated 31.01.2012 as prayed for by the petitioner in their application dated 28.02.2012 as reiterated on 28.02.2018.

For Petitioner (in both W.Ps.)	:	Mr.Vijaykumar Punna for Mr.N.Inbarajan
For Respondents (in both W.Ps.)	:	Mr.M.Hariharan, Additional Govt. Pleader (Taxes)

COMMON ORDER

Heard Mr.Vijaykumar Punna, learned counsel representing Mr.N.Inbarajan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader (Taxes) for the respondents.

2.Since the impugned assessment has been completed ignoring the settled legal position, the Court is constrained to take up the writ petitions for disposal in the present stage.

3.The petitioner, who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act"), is aggrieved by the impugned assessment order dated 31.01.2012 for the assessment year 2005-06. The petitioner had filed the monthly returns in Form A-1 for the year 2005-06 reporting the total and taxable turnover of Rs.34,19,947 / Rs.Nil. The Enforcement Wing Officer inspected the place of business of the petitioner on 17.12.2005 and found certain defects. Based on that, the second respondent issued a show cause notice dated 22.03.2010 proposing to revise the total and taxable turnover. While doing so, the second respondent took note of the current consumption of the petitioner's factory, and calculated the production of Sago and arrived at the total and taxable turnover by adopting the rate of Rs.1,400/- per bag of Sago. Though the petitioner had received the show cause notice dated 22.03.2010, they did not file objections and consequently, the second respondent completed the assessment and passed the impugned order.

4.It would have been well open for this Court to dismiss the writ petitions for more than one reason. Firstly on the ground that the petitioner did not avail the opportunity granted and did not file objections to the show cause notice. Secondly, the impugned assessment order is dated 31.01.2012 and the petitioner has challenged the same in the year 2018. However, since the second respondent has completed the assessment, without taking note of the settled legal position, this Court is constrained to take up the writ petitions for the hearing.

5.In the case of Ponni Sago Factory vs. Deputy Commercial Tax Officer, Salem and Others reported in (2007) 5 VST 223 (Mad.), identical proceedings were put to challenge. The Court, after taking note of the decisions in Kalyani Oil Mills vs. State of Madras reported in (1973) 32 STC 542 (Mad.) and Madurai Soft Drinks (Private) Limited vs. State of Tamil Nadu reported in (1985) 60 STC 94 (Mad.), allowed the writ petitions on the ground that revision of the total and taxable turnover could not be made, based upon the electricity consumption. The above decision was followed by this Court in the case of S.N.K.Starch Industries vs. Deputy Commercial Tax Officer, Attur (Rural) and

Others in W.P.No.7352 of 2005 dated 20.07.2016. Thus, by applying the above legal principle, the impugned assessment order, dated 31.01.2012, is held to be unsustainable in law.

6.Accordingly, Writ Petition No.18698 of 2018 is allowed and the impugned assessment order is set aside giving liberty to the second respondent to proceed further in accordance with law, if he desires to do so.

7.In the light of the above, no orders are necessary in Writ Petition No.18699 of 2018 and the same is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner (ST),
Salem Rural Circle, Salem.

2.The Commercial Tax Officer,
Salem Rural Circle, Salem.

+1cc to Mr.Vijayakumar Punna, Advocate SR.No.49490
+1cc to Special Government Pleader(Taxes) SR.No.49568

CA(CO)
GN(07/08/2018)