IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.1253 and 1254 of 2006
and
W.P.M.P.Nos.1415 and 3236 of 2006

Tamilnadu Petroproducts Limited,
Rep., by its Secretary, M.B.Ganesh,
Manali Express Highway,
Manali, Chennai-600 068. ... Petitioner in both W.Ps.

-vs-

1.The Assistant Commissioner (CT)
Zone XI, "Sire Mansion",
621, Anna Salai, Chennai-600 006.

2.The Deputy Commissioner (CT) (Appeals),
III Floor, Wavoo Complex,
191, NSC Bose Road, Chennai-600 001.

3.Tamil Nadu Sales Tax Appellate Tribunal
(Main Bench), (Rep., by its Secretary),
City Civil Court Buildings,
High Court Complex,
Chennai-600 104. ... Respondents in both W.Ps.

Prayer in W.P.No.1253 of 2006 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the third respondent herein in T.M.P.No.201/05 in T.A.No.230/04 dated 21.12.2005 and quash the proceedings of the third respondent herein in T.M.P.No.201/05 in T.A.No.230/04 dated 21.12.2005 while directing the third respondent Tribunal to entertain the appeal filed by the petitioners in T.A.No.230/04 in so far as it relates to the claim of exemption under Section 6A of the Central Sales Tax Act, 1956 made by the petitioners on a turnover of Rs.52,86,98,311/-.

Prayer in W.P.No.1254 of 2006 : 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 Ap.No.11/04 dated 17.06.2004 and quash the proceedings of the second respondent herein in Ap.No.11/04 dated 17.06.2004 to the extent it relates to confirmation of tax demand of Rs.52,86,98,311/- being the turnover relating to stock transfer made by the petitioners to their stock points in various States on which appropriate sales tax has been paid in those States.

For Appellant : Mr.Parthasarathy,
(in both W.Ps.) for Mr.N.Inbarajan

For Respondents : Mr.V.Haribabu,
(in both W.Ps.) Additional Govt. Pleader (Taxes)

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COMMON ORDER

[Order of the Court was made by T.S.Sivagnanam, J.]

Heard Mr.Parthasarathy, learned counsel, representing Mr.N.Inbarajan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondents.

2.The petitioner has filed Writ Petition No.1253 of 2006 challenging the order dated 21.12.2005, passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, in T.M.P.No.201/05 in T.A.No.230/04. By the impugned order, the Tribunal held that it has no jurisdiction to try the cases falling under Section 6(A) of the Central Sales Tax Act, 1956. After the appeal was entertained by the Tribunal, the petitioner filed stay petition in T.M.P.No.201/05 in which, a condition was imposed. Contending that the condition was an onerous condition, the petitioner has approached this Court and filed Writ Petition No.21069 of 2002, which was dismissed, as against which, Writ Appeal No.2063 of 2002 was preferred and the appeal was disposed of by judgment dated 05.07.2002, directing the Appellate Tribunal to dispose of the main appeal. While the Tribunal took up the main appeal, it held that it does not have jurisdiction and accordingly, dismissed the appeal for want of jurisdiction.

3.Identical issue came up for consideration before one of us (TSSJ) in Writ Petition Nos.12187 to 12189 of 2005 [TNGAC Industries Limited vs. The Commercial Tax Officer] dated 01.09.2016. The only distinction between the cases on hand and the other writ petition was that in the other writ petition, the assessee had not filed appeals before the Sales Tax Appellate Tribunal but, in the instant case, appeals were filed and entertained by the Tribunal and on remand by the High Court to decide the main appeal, the same was rejected on the ground of jurisdiction.

4.The question is whether the petitioner should be directed to approach the Central Sales Tax Appellate Authority. This very issue was considered in TANFAC Industries Limited (supra) and the operative portions of the order read as follows:-

> "5.In this regard, the learned counsel has drawn the attention of this Court to Section 18A, 19, 20 and 22(1B) of the Central Sales Tax Act, 1956, in order to explain the scheme created under the Act for resolution of the dispute. It is further submitted that in terms of sub-section 1 of Section 20, an appeal shall lie to the authority against any order passed by the highest appellate authority of a State under the Act determining issues relating to stock transfers of consignment of goods, in so far as it involves the dispute of inter-state nature.
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> 6.Therefore, to enable the petitioner to approach the Central Sales Tax appellate Authority, the petitioner has to first prefer an appeal to the highest appellate authority of the State. The highest appellate authority of the State is Tamil Nadu Sales Tax appellate Tribunal. In the normal course, the impugned orders passed by the first appellate authority dated 30.09.2002 is appellable to the Tamil Nadu Sales Tax Appellate Tribunal. But in the year 2005, the petitioner thought fit to file writ petitions because in one of the writ petitions they have prayed for a direction to the Union Territory of Puducherry to transfer the credit of the first and third respondents herein against central sales tax demands of the first respondent herein, the taxes paid by the petitioners on their sales of aluminium fluoride during the period 1.4.1989 to 31.3.1991 from their stock point at Kanniakoil, Pondicherry in respect of which taxes have been assessed and realised by the fifth respondent herein under the provisions of the Central Sales Tax Act, 1956.
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> 8.Taking note of the submissions made by the learned counsel for the petitioner and the amendment which has been brought about to the provisions of the Central Sales Tax Act, these writ petitions are disposed of giving liberty to the petitioner to file an appeal before the Tamil Nadu

> Sales Tax Appellate Tribunal and if such an appeal is filed within a period of 60 days from the date of receipt of a copy of this order, the appellate tribunal shall entertain the appeal without reference to the limitation, in the light of the fact that these writ petitions are pending since 2005 and the petitioner seeks to work out his remedies under the provisions of the amended Act.”

Thus, the above decision would apply with full force to the cases on hand.

5.Thus, for the above reasons, Writ Petition No.1253 of 2006 is allowed, the impugned order is set aside and the Appellate Tribunal is directed to take on file the appeal petition and hear the appeal on merits and in accordance with law. The petitioner had the benefit of an interim order of stay during the pendency of these writ petitions. Therefore, until the appeal is heard and disposed of by the Appellate Tribunal, the demand of tax and penalty, as demanded by the Assessing Officer, shall remain stayed.

6.In the light of the orders passed in Writ Petition No.1253 of 2006, remanding the matter for fresh consideration before the Sales Tax Appellate Tribunal, Writ Petition No.1254 of 2006 is closed giving liberty to the assessee to raise all contentions before the Appellate Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner (CT)
Zone XI, “Sire Mansion”,
621, Anna Salai, Chennai-600 006.

2.The Deputy Commissioner (CT) (Appeals),
III Floor, Wavoo Complex,
191, NSC Bose Road, Chennai-600 001.

3.The Secretary,Tamil Nadu Sales Tax Appellate Tribunal
(Main Bench),
City Civil Court Buildings,
High Court Complex,
Chennai-600 104.

+1cc to Mr.N.INBARAJAN, Advocate, S.R.No. 49126
+1cc to the Government Pleader, S.R.No. 49571

W.P.Nos.1253 and 1254 of 2006

TR(27/08/2018)