IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.12638 of 2006
and W.P.M.P.No.14225 of 2006

M/s.Jenway General,
Rep. by its Proprietor,
K.S.Devitre,
G-30/1, Ambattur Industrial Estate,
3rd Main Road, Chennai-58. ... Petitioner

Vs.

The Commercial Tax Officer,
Koyambedu Assessment Circle,
426, T.H.Road, Chennai-95. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent in TNGST.1342939/2002-03 dated 19.04.2006 and as modified by revised notice dated 21.04.2006 and quash the same as illegal.

For Petitioner : Mr.T.Pramod Kumar Chopda
For Respondent : Mr.M.Hariharan, AGP

O R D E R

Heard Mr.T.Pramod Kumar Chopda, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu General Sales Tax Act, 1959 [hereinafter referred to as TNGST Act] has filed this Writ Petition, challenging the notice issued by the respondent for revision of assessment.

3.Before going into the facts of the case, the Court, at the first instance, would consider as to whether the impugned notice satisfies the requirements under Section 16 of the TNGST Act. The said provision deals with Assessment of Escaped Turnover. Sub-section [1][a] of Section 16 of the TNGST Act states that where for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the Assessing Authority may, subject to the provisions of Sub-section [2], at any time within a period of five years from the date of order of filing assessment by the Assessing Authority, the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

4.Thus, the power under Section 16[1][a] of the TNGST Act can be exercised to bring taxable turnovers which have escaped assessment or has been under assessed at a lower rate and this power cannot be utilised to revise or review the turnover either actual or estimated, already assessed, for which purpose, the power of the Assessing Authority could be exercised under Section 55 of the TNGST Act or by the higher authorities, namely, the Deputy or Joint Commissioner.

5.On a reading of the assessment order dated 02.07.2004, I find that the reply given by the dealer was examined and the Assessing Officer found that the dealer has used chemicals incidental to the contract work of pre-coating and they has collected labour charges for such work and therefore, concluded that the value of chemicals used in the execution of contract work is liable to tax @ 12%, since the chemical were procured from outside State. With regard to the remaining turnover which pertains to labour charges, it was held that it was not taxable in the impugned notice. There is no averment as to how, the respondent has come to the conclusion that the power under Section 16 of the TNGST Act has been invoked and as to how, comes to the conclusion that taxable turnover has escaped assessment or has been assessed at a lower rate. Thus, in the absence of any such proposal, the impugned notice has to be regarded as one change of opinion and therefore, the respondent has no jurisdiction to revise the assessment order dated 02.07.2004.

6.For the above reasons, the Writ Petition is allowed and the impugned notice dated 19.04.2006 issued by the respondent is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Koyambedu Assessment Circle,
426, T.H.Road,
Chennai-95.

+1 CC to Mr.T. Pramod Kumar Chopda, Advocate sr 20599
+1 CC to Spl. Govt. Pleader(T) sr 20725.

W.P.No.12638 of 2006
and
W.P.M.P.No.14225 of 2006

KGK(CO)
SP(10/04/2018)