IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19081 of 2007
and M.P.Nos.1 & 2 of 2007

1. K.Packirisamy, (Deceased)
   Dealer in Cement & Steel,
   769, Sivan South Street,
   Nagore-611 002,
   Nagapattinam District.

2. Vasanthi,
   W/o.Late K.Packirisamy.

3. Shanthi,
   D/o.Late K.Packirisamy.

4. P.Ramachandran,
   S/o.Late K.Packirisamy.

5. P.Ganesh,
   S/o.Late K.Packirisamy. ... Petitioners

(P2 to P5 are substituted as LRs of deceased P1:K.Packirisamy as per order dated 06.10.2017 in W.M.P.No.27748/2017 in W.P.No.19081/2007)

Vs.

The Deputy Commercial Tax Officer,
Nagapattinam. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in TNGST 3900172/2005-06 dated 13.04.2007 and quash the same as illegal, arbitrary and against the principles laid down by the Division Bench Judgements of this Court in 6 VST page 100 in the case of Om Plastics vs. CTO and 146 STC page 642 in the case of Madras Granites (P) Ltd., vs. CTO.

For Petitioners : Mr.K.Soundararajan

For Respondent : Mr.M.Hariharan,
Additional Government Pleader

O R D E R

Heard Mr.K.Soundararajan, learned counsel for the petitioners and Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

2. The petitioner (since deceased) has filed this writ petition challenging a revision notice issued under the provisions of the Tamil Nadu General Sales Tax Act, 1959 for the assessment year 2005-06.

3. The only and major issue, which the deceased petitioner challenged by way of this writ petition, is with regard to the proposed reassessment based on the difference between the purchase price and the selling price of cement. The impugned notice came to be issued pursuant to an inspection conducted by the Enforcement Wing Officers on 19.11.2005. The Officers found that the selling price is lesser than the purchase price and therefore, disbelieved the type of transaction.

4. The case of the deceased petitioner itself is that the cement companies from whom they procured the cement give various types of description depending upon the sale of products and therefore, the he was not in a position to make retail sale at lower price. However, the respondent has solely relied upon the report given by the Enforcement Wing, which was reported with this serious defect that the deceased petitioner could not sell a bag of cement at a loss of Rs.10/- to Rs.15/- per bag. In any event, this aspect has to be considered by the assessing officer by perusing the petitioners' books of account, ledger entries etc. Apart from that, the respondent should also take note of the clarification, which has been issued by the Commissioner. The clarification issued by the Commissioner states as follows:

> "88.OPC Cement and PPC Cement : The rate of re-sale tax under the Fifth Schedule at 1% or 5% depends on the selling price of cement in the hands of the re-seller. The rate of re-sale tax is not based on the selling price of the first seller or any previous sellers.
>
> ....
>
> 130.Resale tax of PPC Grade Cement: The rate of re-sale tax under the Fifth Schedule at 1% or 5% depends upon the selling price of cement in the hands of the re-seller. The rate of re-sale tax is not based on the selling price of the first seller or any previous sellers.

(Clarification No.181/2002.D.Dis.Acts Cell-II/37799/2002, Dt. 17.07.2002)

(Clarification No.182/2002.D.Dis.Acts Cell-II/39225/2002, Dt.

17.07.2002)

(Clarification No.183/2002.D.Dis.Acts Cell-II/41801/2002, Dt. 17.07.2002)"

5. This aspect has to be considered by the respondent while deciding the matter. Above all, the respondent should not be influenced by the report given by the Enforcement Wing Officer, as the respondent is an assessing officer and he is expected to take an independent decision in the matter after considering the petitioners' objections.

6. In the light of the above, this writ petition is disposed of by directing the legal heirs of the deceased petitioner to submit their objections to the impugned notice within a period of 60 days from the date of receipt of a copy of this order and the objections given by the legal heirs of the deceased petitioner shall be considered with an independent mind uninfluenced by the observation of the Enforcement Wing Officer, consider the Clarification issued by the Commissioner, examine the books of accounts, ledger entries and other bank statements etc., which may be produced by the petitioners and pass a speaking order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

abr

To

The Deputy Commercial Tax Officer,
Nagapattinam.

+1 CC to Govt. Pleader(T) sr 25743.
+1 CC to Mr.K.Soundararajan, Advocate sr 25666.

W.P.No.19081 of 2007

CA(CO)
SP(24/04/2018)