IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31157 & 31159 of 2018
and
WMP.Nos.36352 & 36355 of 2018

M/s. TVM Edible Oil Refineries
Rep. by its Partner, M.Matheswaran
No.76, M.G.R. Road,
Nanganallur, Chennai 600 061 ..Petitioner (in both W.Ps)

Vs

The Assistant Commissioner (ST),
Nanganallur Assessment Circle,
No.30, 4th Floor, Medavakkam Main Road,
Ullagaram,
Chennai 600 091 ..Respondent (in both W.Ps)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order of Assessment dated 16.10.2018 received by the petitioner on 20.10.2018 in his proceedings TIN/33026320067/2015-2016 & 2016-2017 passed by the respondent and quash the same and to direct the respondent to permit the petitioner to produce reliable evidence that the goods have not been sold inside the state.

For Petitioner : Mr.M.MD.Ibrahim Ali (in both WPs)
For Respondent : Mr.V.Hari Babu Additional Government Pleader (in both WPs)

COMMON ORDER

Mr.V.Hari Babu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of revised assessment dated 16.10.2018 passed in respect of the assessment years 2015-2016 and 2016-2017.

3. Heard both sides.

4. The petitioner is a manufacturer of edible oil and dealer on the file of the respondent. It is stated that the petitioner has its branch offices at Pondicherry and Bangalore. The impugned assessment orders were passed by the Assessing Authority, by considering the disputed transactions as local sale on the reason that the petitioner did not produce the original transit pass and on the other hand, produced only the xerox copy of the same. In some transactions, the Assessing Officer has found that the petitioner has not even produced the xerox copy of the transit pass. It is contended by the petitioner that in view of the Circular No.26/2014 dated 16.06.2014 issued by the Commissioner, non-production of transit pass in original itself, cannot be a ground to deny the claim of the petitioner, that the subject matter transaction is stock transfer. Therefore, it is contended that the Assessing Authority has to consider all other relevant documents and also the xerox copies of the transit pass produced before him to arrive at a conclusion, as to whether the disputed transactions are local sales or stock transfer. In support of such contention, the learned counsel has relied on an order passed by this Court in W.P.No.3288 of 2018 dated 12.04.2018.

5. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the petitioner has not given any valid reason for not producing the original transit pass and in respect of some of the transactions, the petitioner has not even produced the xerox copies of the transit pass. Therefore, he contended that the Assessing Officer is left with no other option, except to treat the disputed transactions as local sales.

6. Perusal of the impugned orders of assessment would show that the petitioner had produced xerox copies of the transit pass except in respect of few transactions. At this juncture, it is relevant to note that similar issue was considered by this Court in W.P.No.3288 of 2018 and an order came to be passed therein on 12.04.2018, by taking note of the circular issued by the Commissioner in Circular No.26/2014 dated 16.06.2014, wherein in Paragraph Nos. 6 and 7 of the said orders reads as follows:

"6. At this juncture, it is relevant to take note of the circular issued by the Commissioner vide Circular No.26/2014, dated 16.06.2014, pertaining to E-Transit pass, non submission at check-post. Paragraph 7 (d) to (f) of the above said circular would be relevant and the same is extracted hereunder:

"d) While holding the legal validity of the statutory provisions relating to issue of transit pass under Section 44-A of the Tamil Nadu General Sales Tax Act, 1959, the Tamil Nadu Taxation Special Tribunal has held in the case of Godrej-Ge Appliances Ltd. Vs. Assistant Commercial Tax Officer, 1999 (114) STC 570 (TNTST) that the assumption made to treat the transaction for which transit pass is not surrendered in the exit check-post as local sales is a rebuttable presumption. The above view has been upheld by the Karnataka High Court in the case of Smt.Geetha Bhat V. Additional Commissioner of Commercial Taxes, Zone I, Gandhinagar, Banagalore, 2012 (52) VST 292 (Karn)

e) Regarding acceptance of other documentary evidences in lieu of surrendering transit pass, the honourable Supreme Court in the case of Sodhi Transport Co. V. State of U.P. reported in 1986 (62) STC 381 (SC), has held as under (page 391 in 62 STC):

"... The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods have been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been redespatched outside the State without effecting a sale within the State, etc....

f) Therefore, in case of non surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved with the transit pass in question had actually crossed the borders of the State, such evidences may be accepted by the assessing authority as an evidence of inter-State movement of goods."

7. The above circular clearly shows that the surrender of E-transit pass is not a sin qua non for establishing that the goods were sold within the State. Since there were several cases arising out of the non surrender of E-Transit pass, the Commissioner has given specific direction to the Assessing Officer. Therefore, the first respondent cannot merely go by the directives of his Superior Officer and ignore the circular, which is very specific. Therefore, this Court is inclined to remit back the matter to the respondents to specifically consider all the documents and verify as to the correctness of the submissions made by the petitioner, without insisting upon the surrender of E-Transit pass."

7. Considering the facts and circumstances of the present case and the findings rendered by this Court in the above said case under similar circumstances, this Court of the view that the matter needs to be remitted back to the Assessing Officer to re-consider the whole issue once again after considering all other relevant documents along with the xerox copies of the transit pass produced by the petitioner. Wherever the documents are not produced, the petitioner shall produce those documents before the Assessing Officer so as to enable him to complete the assessment as directed in this writ petition.

8. Accordingly, both these writ petitions are allowed and the impugned assessment orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment by taking note of the order already passed by this Court in W.P.No.3288 of 2018 dated 12.04.2018, while considering the submission of transit pass. The petitioner shall also be given an opportunity of personal hearing. The whole exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST),
Nanganallur Assessment Circle,
No.30, 4th Floor, Medavakkam Main Road,
Ullagaram,
Chennai 600 091

+2cc to Mr.M.MD.Ibrahim Ali, Advocate, S.R.No.81117

+1cc to the spl Government Pleader, S.R.No.81950

W.P.Nos.31157 & 31159 of 2018

KJ(CO)
GSP(21/12/2018)