BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.657 of 2013 and M.P(MD)No.1 of 2013
AND
W.P(MD)No.5143 of 2009

W.A(MD)No.657 of 2013:

M/s.Imperial Trading Company,
represented by its
Managing Partner,
T.S.Padmanabhan ... Appellant/Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Reserve Lane, Palayamcottai,
   Tirunelveli - 627 002.

2. The Deputy Commercial Tax Officer,
   presently, Commercial Tax Officer,
   Kuzhithurai,
   Kanyakumari District. ... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in M.P(MD)No.1 of 2009 in W.P(MD)No.5143 of 2009, dated 30.06.2009.

Prayer in MP(MD)No.1/2009 in WP(MD)No.5143/2009 :
To stay all further proceedings, pursuance to the impugned order of the 1st respondent in AP.No.228/2003 (1998-1999) dated 18.3.2009 pending disposal of the above writ petition.

Prayer in WP(MD)No.5143/2009 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, under Article 226 of the Constitution of India, to call for the records on the file of the 1st respondent in AP.No.228/2003 (1998-1999) dated 18.3.2009 and to quash the same as illegal, arbitrary and in violation of the principles of natural

justice, and direct the 1st respondent to re-hear and pass fresh order in the appeal in AP.No.228/2003 (1998-1999) after granting to the petitioner, an adequate opportunity of being heard.

For Appellant : Mr.M.Azeem
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

W.P(MD)No.5143 of 2009:

M/s.Imperial Trading Company,
represented by its
Managing Partner,
T.S.Padmanabhan ... Petitioner

Vs.

1. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Reserve Lane,
   Palayamcottai,
   Tirunelveli - 627 002.

2. The Deputy Commercial Tax Officer,
   presently, Commercial Tax Officer,
   Kuzhithurai,
   Kanyakumari District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records on the file of the first respondent in A.P.No.228/2003 (1998-1999), dated 18.03.2009 and quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the first respondent to re-hear and pass fresh order in the appeal in A.P.No.228/2003 (1998-1999) after granting to the petitioner an adequate opportunity of being heard.

For Petitioner : Mr.M.Azeem
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The present writ appeal is against the conditional interim order dated 13.06.2009 made in M.P(MD)No.1 of 2009 in W.P(MD)No.5143 of 2009 filed by the appellant/writ petitioner/assessee.

2. By consent, W.P(MD)No.5143 of 2009 is drawn and is disposed of along with this writ appeal.

3. The appellant/writ petitioner is an assessee on the file of the second respondent and they are engaged in the business of manufacture and supply of pre-stressed concrete poles of varying lengths, primarily to Kerala State Electricity Board pursuant to the contractual agreements entered into with them. According to the appellant/writ petitioner, it is the service contract and is primarily an inter-state service contract and the major materials required for execution of the contract, such as, cement and high tension steel wire are supplied by Kerala State Electricity Board and a meagre quantity of jelly and sand were used by them.

4. The appellant/writ petitioner would further state that the second respondent herein had passed 10 assessment orders from 1986-87 to 1997-98 on various dates under the provisions of Tamil Nadu General Sales Tax Act (in short 'TNGST') levying tax and penalty on the casting charges for the casting, transport and delivery of the concrete electric poles to Kerala State Electricity Board on the ground that electric poles were delivered in Tamil Nadu and therefore, it was a local sale of the electric poles in Tamil Nadu. The appellant/writ petitioner making a challenge to the said orders, preferred the appeals before the first respondent who vide common orders dated 10.12.2001 had modified the assessment and set aside the levy of tax and penalty made on the casting charges under the TNGST Act, holding that the service contract for the supply of concrete poles to Kerala State Electricity Board in Kerala State are inter-state transactions and not liable to be taxed under the TNGST Act. The first respondent had set aside the orders of assessment in A.P.Nos.167/2000 (1992-93); 168/2000 (1993-94); 169/1999 (1994-95) and 568/2000 (1997-98), dated 02.12.2003 and remanded to the second respondent for fresh disposal and took up the very same stand.

5. It is also the case of the appellant/writ petitioner that for the assessment years 1998-99 and 1999-2000, the books of accounts and their records were verified by the predecessors in office of the second respondent and the second respondent had passed the best of judgment assessments orders dated 06.10.2003, levying tax and penalty on the casting charges, treating them as local sales turnover in Tamil Nadu.

6. The second respondent vide order dated 06.10.2003, had determined the total and taxable turnover at Rs.1,16,79,524/- (Rupees One Crore Sixteen Lakhs Seventy Nine Thousand Five Hundred and Twenty Four only) and levied the tax at the rate of 16% p.a., and that apart, a tax of Rs.18,68,724/- (Rupees Eighteen Lakhs Sixty Eight Thousand Seven Hundred and Twenty Four only) and a penalty of Rs.25,87,086/- (Rupees Twenty Five Lakhs Eighty Seven Thousand and Eighty Six only) was also levied under Section 12(3)(b) of the TNGST Act and it was an exparte order.

7. The appeals preferred in that regard before the first respondent also ended in dismissal on 18.03.2009 and challenging the legality of the same, has filed W.P(MD)No.5143 of 2009. The appellant/writ petitioner also made a similar challenge to the said orders made in A.P.No.69/2007 (1999-2000) in W.P(MD)No.5142 of 2009.

8. The learned Judge vide impugned order dated 30.06.2009 has taken note of the fact that there is no Presiding Officer in the office of the Appellate Authority and hence, he could not file an appeal and granted an interim order on condition of directing the appellant/writ petitioner to deposit the disputed tax within a period of eight weeks and challenging the legality of the same, the present writ appeal is filed.

9. The learned Counsel for the appellant/writ petitioner would submit that challenging the similar nature of conditional interim order passed in M.P(MD)No.1 of 2009 in W.P(MD)No.5142 of 2009, he filed W.A.(MD)No.681 of 2009 and it was allowed to be withdrawn with liberty to the appellant/writ petitioner to file an appropriate proceedings before the Tamil Nadu Sales Tax Appellate Tribunal, with a further direction to dispose of the same at the earliest without putting the issue of limitation and since the point in issue is one and the same in A.P.No.228/2003 pertaining to 1998-99, which is the subject matter of challenge in the present writ petition, the same order may be passed.

10. This Court heard the submissions of Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents also.

11. A perusal of the common judgment dated 16.12.2009, made in W.A(MD)No.681 of 2009 and W.P(MD)No.5142 of 2009 would disclose that erroneously W.P(MD)No.5143 of 2009 has been included, but actually what was disposed of, is W.A(MD)No.681 of 2009 pertaining to W.P(MD) No.5142 of 2009 only.

12. It is not disputed that the issue involved in W.P(MD) Nos.5142 and 5143 of 2009 is one and the same and in the said common judgment, dated 16.12.2009, passed in W.A(MD)No.681 of 2009 and W.P (MD)No.5142 of 2009, both the writ appeal as well as the writ petition were allowed to be withdrawn with liberty to the appellant/writ petitioner/assessee to file an appropriate proceedings before the Tamil Nadu Sales Tax Appellate Tribunal, within a stipulated time with a direction to dispose of the same on merits without putting the issue of limitation.

13. In the light of the same, W.A(MD)No.657 of 2013 as well as W.P(MD)No.5143 of 2009 are partly allowed and the impugned order dated 18.03.2009 passed by the first respondent in W.P(MD)No.5143 of 2009, is set aside and A.P.No.228/2003 is once again remanded to the first respondent for fresh disposal in accordance with law and the said exercise is to be carried out by the first respondent within a

period of eight weeks from the date of receipt of a copy of this judgment and the decision taken in that regard, shall be communicated to the appellant/writ petitioner/assessee. No costs. M.P.(MD)No.1/2013 is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Reserve Lane,
   Palayamcottai,
   Tirunelveli - 627 002.

2. The Deputy Commercial Tax Officer,
   presently, Commercial Tax Officer,
   Kuzhithurai, Kanyakumari District.

+ 1 CC TO Mr.M.AZEEM, ADVOCATE IN SR No. 50825

RSB
TE/KKR/SAR-3 : 13/03/2018 : 5P/4C

W.A.(MD)No.657 of 2013
and M.P(MD)No.1 of 2013 and
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