IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15694 of 2002

Erbis Engineering Company Limited
Having Office at
No.39, 2nd Main Road, R.A.Puram
Chennai – 600 028. .. Petitioner

Vs

1.State of Tamil Nadu Rep. by
The Secretary to Government
Commercial Taxes Department
Secretariat, Fort St. George
Chennai – 600 009.

2.State of Tamil Nadu, Rep. by
The Deputy Commissioner (CT)
Chennai Central Division
Chennai – 600 006.

3.The Appellate Assistant Commissioner of
(Commercial Taxes), CT-III Chennai
Kuralagam, Chennai – 600 108.

4.The Commercial Tax Officer
Egmore – II, Asst. Circle
Egmore, Chennai – 600 008.

5.Tamil Nadu Sales Tax Appellate Tribunal
Additional Bench
Chennai – 104, Rep. by its Registrar .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, calling for the records of the fifth respondent in common order dated 07.12.2001 in STA No.194/2001 and quash the same in so far as Central Sales Tax concerned as being arbitrary and passed without proper application of mind.

For Petitioner : Mr.Rahul Balaji

For Respondents : Ms.G.Dhana Madhiri, Government Advocate.

ORDER

[Order of the Court was made by Dr.VINEET KOTHARI, J]

The petitioner has filed this petition aggrieved by the order dated 07.12.2001 passed by the learned Tamil Nadu Sales Tax Appellate Tribunal in STA.194/01 by which the Appeal filed by the State was remanded with the following observations:

> "STA.194/01
>
> The State contends in the STA that the relief granted by the Appellate Assistant Commissioner on a turnover of Rs.88,70,000/- is not justified, in asmuch as the assessing authority did not scrutinize the relevant records and also the records which were seized at the time of inspection. We find in all these cases materials were imported either at Chennai harbour or at Chennai Airport. Though it was pleaded by the learned Sales Tax Practitioner that the goods were sent to their branch in Pondicherry and subsequently the sales were effected from Pondicherry branch, the connected movement records for consigning such goods to their branches were neither produced before the assessing authority nor before the Appellate Assistant Commissioner. At the time of hearing the learned Sales Tax Practitioner filed documents relating to their clearing and forwarding agent only. Moreover, we find that the recovered records which show that the goods were cleared in Chennai by the Head Office only. In the absence of clear proof for movement from Madras to Pondicherry we do not agree with the contention of the learned Sales Tax Practitioner. That apart some of the records would show that the purchase orders were paced with the Madras Office only by the buyers. However, we are of the view that these records have to be produced before the assessing authority. Therefore, as aforesaid in the earlier State Tribunal Appeals we set aside the orders of the Appellate Assistant Commissioner in respect

of the turnover of Rs.88,70,000/- and direct the assessing authority to examine the connected records and pass appropriate orders bearing in mind the directions given in STA 1764/2000. While remitting the turnover we also remand the consequent penalty. In fine, the State appeal is remanded."

2. The learned counsel appearing for petitioner would submit that this Court on 12.11.2019, had allowed the writ petition in W.P.No.15659 of 2002, which is similar to the present writ petition, by way of remanding to pass orders de novo. Therefore, a similar order may be passed in this writ petition also.

3. The learned Government Advocate appearing for the respondents does not dispute the same.

4. Considering the facts and circumstances and also Considering the fact that the writ petition in W.P.No.15659 of 2002, which is similar to the present writ petition, has been allowed by way of remanding, we uphold the order dated 07.12.2001 passed by the Tamil Nadu Sales Tax Appellate Tribunal in S.T.A.No.194 of 2001 and direct the First Appellate Authority to pass orders de novo, within a period of six months from today. The petitioner shall appear before the First Appellate Authority, at the first instance on 10.12.2019.

5. In the result, this writ petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary to Government
Commercial Taxes Department
Secretariat, Fort St. George
Chennai - 600 009.

2.The Deputy Commissioner (CT)
State of Tamil Nadu
Chennai Central Division
Chennai - 600 006.

3.The Appellate Assistant Commissioner of
(Commercial Taxes), CT-III Chennai
Kuralagam, Chennai - 600 108.

4.The Commercial Tax Officer
Egmore - II, Asst. Circle
Egmore, Chennai - 600 008.

5.The Registrar,
Tamil Nadu Sales Tax Appellate Tribunal
Additional Bench
Chennai - 104.

W.P.No.15694 of 2002
and WMP Nos.15833/2000 & 2672/2005

GP(CO)
CSR: 02/01/2019