IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.01.2019
CORAM
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.13986 of 2007
and
M.P.No.2 of 2007

Tvl.Chennai Pesticides,
Represented by its Managing Partner,
A.K.Rajendran,
No.411, Suramangalam Main Road,
Salem - 9.

...Petitioner

Vs

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer (FAC),
Leigh Bazaar Circle,
Salem.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records on the file of the first respondent in No.147/2005 in D.Dis.Acts.Cell.II/39022/05 dated 26.09.2005 and connected records on the files of the second respondent in TNGST.RC.No.2621192/2004-05 dated 11.12.2006. and quash the same.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.Dhana Mandhuri
Government Advocate (T)

ORDER

The case of the petitioner is as follows:-

The petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 and assessee on the files of the second respondent herein. The petitioner deals with certified seeds for sowing purpose and holds license for seed processing. During the course of the said process, the seeds are tested for germination, moisture, genetic purity, seed vigor etc., and after getting the result under the personal supervision of the

Tamil Nadu Seed Certification Department Officials, seeds are treated with chemicals for pests and fungus, then packed and sold for sowing purpose only. What is sold according to the petitioner is only cotton seed and not oil seeds used for edible purpose.

2.When the things stood thus, the petitioner was issued with notice of assessment proposing to assess the cotton seed sold by the petitioner for sowing purpose as cotton oil seed under item 6(iii) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 at 4%. To the notice issued, the petitioner filed his objections on 01.11.2006. While so, the second respondent who is the assessing authority, issued orders of assessment in TNGST.RC.No.2621192 /2004-05 dated 11.12.2006 assessing the entire turnover of Rs.5,49,323/- at 4% treating the goods as oil seeds.

3.The petitioner states that incidentally the Tamil Nadu Seed Association had represented to the first respondent to clarify the rate of tax for variety cotton seeds used for seeding purpose. The Association had also represented that the seeds for seeding purpose was exempt from tax under item 19, Part-B of the Third Schedule to the Act. In view of the confusion in the entry, the Association sought for amending Item 7, Part-B of the Third Schedule so as to include the seeds for seeding purpose in clear terms, for availing exemption. The representation made by the Association was simply refused by the first respondent by order dated 26.09.2005.

4.Hence, the petitioner has come up with this writ petition seeking to set aside the order dated 26.09.2005 and also the consequential assessment order dated 11.12.2006 issued by the second respondent.

5.The learned counsel for the petitioner has submitted that the representation made by the Association has been simply refused by the first respondent by Lr.No.K.Dis.Acts.Cell.3/47328/2005, dated 26.09.2005. He also submitted that the clarification of the first respondent as well as the orders passed by the second respondent are violative of the principles of natural justice, without jurisdiction and authority of law. It is also his submission that the impugned order based on the said clarification is contrary to the statutory entry 7 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959.

6.This Court has also heard the submissions made by the learned Government Advocate appearing for the respondents.

7.It is the specific case of the petitioner that the order of assessment has been passed by the second respondent without considering the schedule to the Act and no proper reasoning adduced for arriving the taxability in respect of the transaction of the petitioner. Such submission is not refuted by the learned Government Advocate appearing for the respondents, who fairly submitted that the matter be remanded for fresh consideration in line with the Schedule to the Act.

8.Considering the facts and circumstances of the case, the impugned order passed by the first respondent is set aside and the matter is remitted to the first respondent for passing appropriate orders, independently applying the Schedule to the Tamil Nadu General Sales Tax Act, 1959, after affording due opportunity of hearing to the petitioner. Such an exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

9.The writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jas/km
To

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer (FAC),
Leigh Bazaar Circle,
Salem.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.3212

+1cc to the Spl Government Pleader, S.R.No.4287

W.P.No.13986 of 2007
and
M.P.No.2 of 2007

SV(CO)
GSP(21/02/2019)