IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.15171 & 15172 of 2007
and
M.P.No.2 of 2007 in W.P.No.15171 of 2007
and
M.P.No.2 of 2007 in W.P.No.15172 of 2007

Tvl.Selvam Seeds (P) Ltd.,
Rep. by its Director I.Selvam,
491, Kamarajanar Road,
Attur. ...Petitioner in all WPs

Vs

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600005.

2. The Appellate Assistant
Commissioner (CT),
Commercial Taxes Building, Salem.

3. The Deputy Commercial Tax Officer,
Attur (T) Assessment Circle, Attur.
...Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the files 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 A.P.131/2006 dated 09.03.2007 and A.P.18/2006 dated 16.02.2007 and quash the same.

For Petitioner : Mr.M.Vadivel
(in all Wps) for Mr.R.Senniappan

For Respondents: Mr.Mohammed Shaffiq, Spl. GP
(in all WPs)

COMMON ORDER

The order of the Assessment Officer as confirmed by the Appellate Authority in connection with the issue as to whether the cotton seeds are taxable at the rate of 4% under Schedule-II of the Tamil Nadu General Sales Tax Act, 1959, is under challenge in the present writ petition. The clarification of the respondent enabling them to make such a demand is also under challenge in these writ petitions.

2. The issue involved in the present writ petitions was already a subject matter in this Court in W.P.Nos.10768 to 10770 of 2006, wherein this Court, while setting aside the assessment orders insofar as it relates to taxability of cotton seeds used exclusively for seeding purposes, had remanded back the same to the Assessing Officer for re-considering the same. The relevant portion of the said order reads as follows:

> 6.Upon carefully considering the affidavit, documents on record and the oral submissions, it is clear that the Commissioner of Commercial Taxes, the First Respondent herein, has stated, in the letter dated 30.08.2005 that the request for amendment of entry 7 cannot be complied with and, in the Clarification dated 26.09.2005, that hybrid cotton seeds are taxable at the rate of 4% under entry 6(iii) of the II Schedule to the TNGST Act. The said Communication and Clarification do not contain any reasons. It also appears that proper opportunity was not provided to the Petitioner to state its case or its objections before the said Communication and Clarification were issued. Although Section 28 A of the TNGST empowers the Commissioner of Commercial Taxes to issue a clarification on the rate of tax in response to a request from a registered dealer, the said communication and Clarification also do not cite any applicable provisions of law. Further, the Assessment Orders dated 28.02.2006 do not consider the submission that cotton seeds that are used only for seeding purposes are exempted under Entry 7 of Part -B of the III Schedule. Consequently, it is in the interest of justice that the Assessment Orders dated 28.02.2006, both under the CST Act and the TNGST Act, be set aside in so far as they relate to the taxability of cotton seeds used exclusively for seeding purposes. As a result, the Assessing Officer is directed to carry out fresh assessment, in that regard, after providing a reasonable opportunity to the Petitioner to submit objections and make its submissions. The said Assessing Officer shall make the assessment on an

independent basis by disregarding Clarification No.147 dated 26.09.2005 or any other clarification and the communications dated 30.08.2005 and 13.10.2005. The said fresh assessment proceedings with regard to the taxability of cotton seeds used for seeding purposes shall be completed within a period of four months from the date of receipt of a copy of this order. Needless to say, the Assessment Orders shall remain binding in all other respects and the Assessing Officer shall decide the taxability of cotton seeds used exclusively for seeding purposes without taking into account any observations in this order on the merits of the dispute.

3. The facts involved in the aforesaid decision is applicable to the present case also. In view of the same, this Court is also constrained to take a similar decision.

4. In the light of the above observations, the orders of the second respondent in A.P.131/2006 dated 09.03.2007 and A.P.18/2006 dated 16.02.2007, are set aside. Consequently, the matter is remanded back to the Assessing Officer, who shall make the assessment on an independent basis by disregarding Clarification No.147/2005 dated 26.09.2005 or any other clarification. Such fresh assessment proceedings with regard to taxability of cotton seeds used for seeding purposes shall be completed within a period of 4 months from the date of receipt of copy of this order.

5. With the above observations, the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600005.

2. The Appellate Assistant
Commissioner (CT),
Commercial Taxes Building, Salem.

3. The Deputy Commercial Tax Officer,
Attur (T) Assessment Circle, Attur.

+1cc to Mr.R.Senniappan, Advocate sr.48966
+1cc to Special Government Pleader (Taxes) sr.50034

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