IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

Coram:

The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mrs.Justice V.B.Bhavani Subbaroyan

Writ Petition Nos. 10386 of 2004 & 1959 of 2005
&
W.M.P.No.12107 of 2004

A.Ramiah ...Petitioner in both the cases

Vs.

1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai.

2. The Appellate Assistant Commissioner (C.T), Virudhunagar.

3. The Deputy Commercial Tax Officer, Thiruppattur.

...Respondents in W.P.No.10386 of 2004

1. The Appellate Assistant Commissioner (C.T), Virudhunagar.

2. The Assistant Commissioner (CT), Tirupattur 630 211.

3. The Deputy Commercial Tax Officer, Office of the Deputy Commissioner, Madurai.

4. The Deputy Commercial Tax Officer, Office of the Deputy Commissioner, Tirupattur Assistant Circle, Tirupattur.

...Respondents in W.P.No.1959 of 2005

Prayer in W.P.No.10386 of 2004: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records in Madurai Tribunal State

Appeal No.129/99 dated 06.11.2003 on the file of the Tamil Nadu Sales Tax Appellate Tribunal Madurai confirming the order dated 23.01.1998 of the third respondent and quash the same.

Prayer in W.P.No.1959 of 2005: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified mandamus to call for the records of the fourth respondent made in its proceedings in Na.Ka.No.181/2005/3 dated 08.02.2005 and quash the same and forbear the respondents from any way demanding or collecting the amount from the petitioner in view of the settlement dated 31.01.2000 and 30.03.2000 entered between the petitioner and the third respondent.

For Petitioner : Mr.M.V.Venkataseshan
(in W.P.No.10386 of 2004)
M.Kumar (in W.P.No.1959 of 2005)

For Respondents: Mrs.G.Dhanamadhri
Government Advocate
(in both the cases)

COMMON ORDER

[Order of this Court was made by T.S.SIVAGNANAM.,J]

We have heard Mr.M.V.V.Venkataseshan, the learned counsel for the petitioner in W.P.No.10386 of 2004 and Mr.M.Kumar, learned counsel for the petitioner in W.P.No.1959 of 2005 and Mrs.Dhanamadhri, learned Government Advocate appearing for the respondents in both the cases.

2. The petitioner who is a registered dealer on the file of the third respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 is aggrieved by the order passed by the Tamil Nadu Sales Tax Appellate Tribunal alleging the appeal filed by the respondent/state.

3. The issue which fell for consideration is whether, based on the electricity consumption, the turnover of the appellant/petitioner can be determined. Though there are decisions to such effect, it is necessary to go into the factual aspect as to whether the entire consumption of electricity by the petitioner/union was solely for the purpose of oil crushing unit. No doubt, it is true that the petitioner did not produce sufficient records before the Assessing Officer. However, we are of the view that the petitioner should not be foreclosed from doing so and we give one more opportunity to the petitioner to prove before the Assessing Officer that the consumption of electricity was not only for the oil crushing unit but also for rice hulling and grinding.

4. Only on the said ground, we allow the writ petition and set aside the order passed by the Tribunal as well as Assistant Commissioner and remand the matter to the Assessing Officer for fresh consideration. The petitioner shall produce all records to substantiate their claim and an opportunity of personal hearing should be granted to the petitioner and the assessment should be redone in accordance with law.

5. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrm/smv

To

1. The Tamil Nadu Sales Tax Appellate
   Tribunal (Additional Bench) Madurai.

2. The Appellate Assistant Commissioner (C.T),
   Virudhunagar.

3. The Deputy Commercial Tax Officer,
   Office of the Deputy Commissioner,
   Madurai.

4. The Deputy Commercial Tax Officer,
   Office of the Deputy Commissioner,
   Tirupattur Assistant Circle, Tirupattur.

5. The Assistant Commissioner (CT)
   Tirupattur 630 211.

+1cc to the Special Government Pleader(Taxes), S.R.No. 34213

W.P Nos. 10386 of 2004 & 1959 of 2005
&
W.M.P.No.12107 of 2004

EV(CO)
GN(04/06/2019)