IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos. 3955 of 2009 & 7637 of 2008

S.V.Sivalinga Nadar & Sons,
rep. by its partner S.V.S.Velkumar, ...(Petitioner in Both W.P.Nos.)

Vs

1.The Commissioner,
Commercial Tax Department,
Chepauk, Chennai-600 005 ...(1st Respondent in both W.P.Nos.)

2.The Commercial Tax Officer,
Villupuram
...(2nd Respondent in W.P.No.7637of 2008)

3.The Assistant Commissioner,
Commercial Taxes, Villupuram-II,
Villupuram District. ...(2nd Respondent in W.P.No.3955 of 2009)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking for writ of Certiorari calling for records relating to the assessment orders dated 16.12.2008 and 29.02.2008 passed by the 2nd respondent in both the writ petitions in respect of the petitioner's TNGST Nos.4700269 for the Assessment years 2005-06 and 2004-05 and to quash the same.

For Petitioner in both W.Ps: Mr.V.S.Sivasundaram

For Respondents in both W.Ps: Mr.Mohammed Shaffiq
Special Government Pleader

COMMON ORDER

The assessment orders for the assessment years 2004-05 & 2005-06 are under challenge in the present writ petitions.

2.Though the petitioner has raised several grounds challenging the assessment orders, the learned counsel appearing for the petitioner would predominantly embark upon the ground that, when the assessment order for the year 2003-04 was challenged before the Tribunal, the activities of the alleged process done by the petitioner/company was held to be a manufacturing activities and therefore the learned counsel would submit that the impugned orders in the present writ petitions, holding otherwise, requires to be set aside.

3.The learned Special Government Pleader appearing for the respondents, on the other hand would submit that the orders of the Tribunal holding that the process conducted by the petitioner/company would amount to manufacture will not be a binding precedent for the subsequent assessment years and that the Authorities are at liberty to evaluate the same point raised for the subsequent assessment years also and in support of such contention, the learned Special Government Pleader relied upon the decision of Bharat Sanchar Nigam Limited & another Vs. Union of India & others reported in (2006) 3 SCC Page No.1 and the decision in the case of Catholic Syrian Bank Limited Vs. Commissioner of Income Tax reported in (2012) 3 SCC Page 784. In the line of these decisions, it cannot be said that the decision taken by the Tribunal for the earlier assessment years would be a bar to the Assessing Authority for the subsequent assessment years, since it would not amount to either as res-judicata or a binding precedent as held in these decisions.

4.Nevertheless, since the decision of the Tribunal that the processing undertaken by the petitioner/company would amount to manufacturing activities was arrived at on the basis of various decisions of the Hon'ble Supreme Court, this Court is of the view that the petitioner could be given another opportunity to place these decisions before the Assessing Officer for reconsideration.

5.It is made clear that this Court has not expressed its views that the finding of the Tribunal for the earlier assessment year 2003-04 will be a binding precedent or a guiding factor for the subsequent assessment years for which the matter is being remanded back and that the Assessing Officer is at liberty to arrive at his own conclusion on the merits of the case.

6.In the light of the above observations, the impugned orders are set aside and the matters are remanded back to the second respondent for a fresh consideration. The petitioner is at liberty to raise additional objections before the second respondent within a period of 15 days from the date of receipt of copy of this order. On receipt of such objections, the second respondent shall consider the same after giving due opportunity of personal hearing to the petitioner and pass appropriate orders as expeditiously as possible.

7.In the result, the writ petitions stand disposed of accordingly. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mrm/vsn
To
1.The Commissioner,
Commercial Tax Department,
Chepauk, Chennai-600 005

2.The Commercial Tax Officer,
Villupuram

3.The Assistant Commissioner,
Commercial Taxes, Villupuram-II,
Villupuram District.

+1 CC to The Spl. Govt. Pleader sr 65012.
+1 CC to Mr.V.S.Sivasundaram, Advocate sr 64491.

W.P.Nos.3955 of 2009 & 7637 of 2008

BR(CO)
SP(12/09/2019)