In the High Court of Judicature at Madras

Dated : 27.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.621, 626, 632 and 635 of 2019 &
CMP.Nos.5087, 5101, 5138 and 5153 of 2019

M/s.Pratipa Cashews, rep.by
its Partner M.Ramakrishnan ... Appellant in all

Vs

The Commercial Tax Officer,
Panruti (Rural) Circle,
Panruti, Cuddalore District. ... Respondent in all

APPEALS under Clause 15 of the Letters Patent against the orders dated 19.12.2018 passed W.P.Nos.33761, 33767 and 33772 of 2018 as well as WP.No.33766 of 2018.

Prayer in W.P.No.33761 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN.33454500353/2015-2016 dated 16.06.2017 and quash the same.

Prayer in W.P.No.33772 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN.33454500353/2014-2015 dated 09.06.2017 and quash the same.

Prayer in W.P.No.33767 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN.33454500353/2016-2017 dated 16.06.2017 and quash the same.

Prayer in W.P.No.33766 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN.33454500353/2011-2012 dated 06.08.2015 and quash the same.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.V.Haribabu, AGP

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mrs.R.Hemalatha, learned counsel for the appellant and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent. By consent, the writ appeals are taken up for joint disposal.

2. These appeals are directed against the orders dated 19.12.2018 made in W.P.Nos.33761, 33766, 33767 and 33772 of 2018.

3. The appellant, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act) filed the said writ petitions challenging the orders of assessment under the Act for the years 2011-12 dated 06.8.2015, 2014-15 dated 09.6.2017, 2015-16 and 2016-17, both dated 16.6.2017.

4. The assessments were completed on best of judgment basis since the appellant did not file their objections to the respective revision notices dated 18.6.2015, 16.5.2017, 08.5.2017 and 08.5.2017. The revision of assessments was made pursuant to an inspection conducted by the Enforcement Wing Officials in the business premises of the appellant. The allegation made against the appellant was that they did not maintain the input tax credit claim, adjustment and carry forward register and stock difference.

5. The case of the appellant is that the Assessing Officer, without conducting any independent enquiry, merely went by the proposal of the officials of the Enforcement Wing, which amounted to abdication of his statutory duty as an Assessing Officer.

6. Mrs.R.Hemalatha, learned counsel for the appellant has relied upon a decision rendered by one of us (TSSJ) in the case of Narasus Roller Flour Mills Vs. CTO [reported in (2015) 81 VST 560] and a decision of the Division Bench of this Court in the case of Madras Granites (P) Ltd. Vs. CTO, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642].

7. Further, with regard to non submission of the reply to the revision notices, the learned counsel for the appellant

would submit that though the clerk of the appellant received the notices, he did not bring it to the notice of the appellant and that therefore, the objections could not be filed. She would further submit that there is no warrant for imposing penalty or equal time addition on the appellant.

8. The learned Single Judge faulted the appellant for not having availed the appeal remedy and therefore, directed the appellant to pay 50% of the tax liability for three of the assessment years namely 2014-15, 2015-16 and 2016-17. It was also made clear that if the same was done, liberty was granted to file appeals before the Appellate Authority. In so far as W.P.No.33766 of 2018, which was filed as against the assessment order for the year 2011-12, is concerned, the learned Single Judge dismissed it on the ground that the writ petition was filed 3½ years after the assessment order was passed and that therefore, no relief could be granted. Challenging the same, the appellant is before us.

9. It is to be noted that though the assessments were completed in the year 2015/2017, the respondent has not been able to recover a single pie towards tax or penalty and the assessment orders remained as paper orders. That apart, the revision of assessment was based upon a report submitted by the officials of the Enforcement Wing. Hence, we are of the considered view that an opportunity can be granted to the appellant to put forth their contentions, since already the appellant remitted tax along with their returns, as the allegation is stock difference.

10. In our considered view, if the revision of assessment is based upon the inspection conducted by the officials of the Enforcement Wing, it is but appropriate that an opportunity should be granted to the dealer so as to put forth their contentions. That apart, the dealer appears to be a small dealer in cashew nuts in Cuddalore District.

11. Accordingly, the writ appeals are disposed of and the orders dated 19.12.2018 passed in the said writ petitions are modified by directing the appellant to pay 15% of the tax demanded for each of the assessment years within three weeks from the date of receipt of a copy of this judgment. If the said condition is complied with, the appellant is entitled to treat the assessment orders as show cause notices and submit their objections within 10 days therefrom, after which, the respondent shall afford an opportunity of personal hearing to the authorized representative of the appellant and redo the assessments on merits and in accordance with law. In the light of the above directions, till the assessments are completed

afresh, the remaining tax and penalty shall not be demanded from the appellant and the Department shall abide by the fresh assessment orders to be passed by the respondent. The benefit of this order will not enure to the appellant if they fail to comply with the above condition within the time stipulated and the writ appeals would stand dismissed automatically. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Panruti (Rural) Circle,
Panruti, Cuddalore District.

+4cc to M/S.R.Hemalatha, Advocate sr.184667, 18468, 18469, 18470

WA.Nos.621, 626, 632 & 635/2019 &
CMP.Nos.5087, 5101, 5138 & 5153/2019

rr[co]
srg 03/04/2019