IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.6620 & 6622 of 2019
and WMP.Nos7444 & 7447 of 2019

Tvl. South India Cashews,
Represented by its Partner Mrs. S.R. Kavitha,
No. 344, M.R.K. Salai,
Indira Nagar,
Neyveli - 607 801. ... Petitioner in both W.Ps.

vs.

Commercial Tax Officer,
Panruti (Rural)
Cuddalore (Dt) ... Respondent in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records relating to the TIN Nos. 33754500770/2011-12 & 33754500770/2012-13 respectively dated 30.10.2017 passed by the respondent, quash the same as arbitrary and illegal and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Ms. G.Dhanamadhri
Government Advocate

COMMON ORDER

This common order will govern both these writ petitions. In other words, this common order will dispose of both these writ petitions.

2. Mr.Joseph Prabakar, learned counsel on record for writ petitioner in both writ petitions and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone respondent in both writ petitions are before this Court.

3. This Court is informed that both the writ petitions arise out of one common factual matrix, writ petitioner is the same in both the writ petitions and subject matter of these writ petitions arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (hereinafter 'TNVAT Act' for brevity).

4. This Court is also informed by learned counsel on both sides that the central theme/core issue in both these writ petitions is the same.

5. With consent of learned counsel on both sides, main writ petition is taken up and is being disposed of.

6. Considering the trajectory of the hearing today or in other words owing to what unfurled in the hearing today, it may not be necessary to set out factual matrix in great detail.

7. Suffice to say that two revised Assessment Orders both dated 30.10.2017 and both made under Section 27 of TNVAT Act have been called in question in these writ petitions. These two revised Assessment Orders shall hereinafter be referred to in this order as 'impugned orders' in plural and 'impugned order' in singular.

8. Impugned orders being revised Assessment Orders pertain to Assessment Years 2011-12 and 2012-13. To be noted, impugned order in W.P.No.6620 of 2019 pertains to Assessment Year 2011-12 and impugned order in W.P.No.6622 of 2019 pertains to Assessment Year 2012-13.

9. The revised Assessment Orders were passed after Enforcement Wing Officers inspected the business premises of the writ petitioner and found certain discrepancies primarily pertaining to 'Input Tax Credit' ('ITC' for brevity) carry forward Register not being maintained and other discrepancies.

10. As already alluded to supra, considering the nature of the hearing today and owing to the order which this Court proposes to pass, it may not be necessary to advert to facts in great detail.

11. It is submitted without any disputation or disagreement that writ petitioner by writ petitioner's own volition has already paid 50% of the disputed tax qua the impugned orders.

12. The grounds that are now being raised by assailing the impugned orders turn heavily on facts and it may be necessary to verify books of accounts and records. Therefore, this Court is of the view that it would be appropriate to relegate the writ petitioner to the alternate remedy by way of an appeal to the jurisdictional appellate Deputy Commissioner. This appellate remedy is under Section 51 of TNVAT Act under which a pre-deposit of 25% of disputed tax is a condition precedent for entertaining the appeal. As there is no disputation or disagreement that writ petitioner by writ petitioner's own volition has already paid 50% of disputed tax, the jurisdictional appellate Deputy Commissioner shall entertain the appeals against impugned orders, if filed by writ petitioner, by giving credit to the payment already made.

13. If the writ petitioner chooses to file statutory appeal under Section 51 of TNVAT Act, it is made clear that all questions including the grounds raised in the instant writ petition are left open. It is also made clear that appellate authority, still being an authority dealing with facts, at the discretion of the appellate authority, can examine records and books of accounts if deemed necessary.

14. Considering the fact that writ petitioner has paid 50% of the disputed tax by writ petitioner's own volition, this Court deems it appropriate to exclude the time spent in the instant writ petition i.e., time from the date of filing of instant writ petition to the date on which instant order is made available and provided to the parties (on copy applications made in time) by the Registry of this court for computing the period of limitation for the statutory appeals. To be noted, as per case files placed before this Court, instant writ petitions have been filed on 04.03.2019. Even after exclusion of time spent in the instant writ petitions, if there is delay, it is open to the writ petitioner to seek condonation of delay and the same shall be decided by the appellate authority on its own merits and in accordance with law.

15. These two writ petitions are disposed of with the above observations. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

Commercial Tax Officer,
Panruti (Rural)
Cuddalore (Dt)

+1 cc to the Special G.P.(taxes), Advocate, S.R.No.62053

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BP(CO)
SSM(10/09/2019).