IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16435 of 2017
and
W.M.P.No.17773 of 2017

Tvl.S.D.K.Sago Factory,
Represented by its Proprietor S.Vetrivel,
No.35-A, Paithur Raod, Attur Taluk,
Salem District. ... Petitioner

Vs.

1.The Commissioner Tax Officer,
Attur (Town) Assessment Circle,
Attur, Salem District.

2.The Appellate Deputy Commissioner (CT),
C.T.Building, Salem. ... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorarified Mandamus, calling for the records on the files of the second respondent in A.P.No.VAT.284/2015 dated 18.11.2016 and quash the same as being contrary to the principle laid down by the Honourable Supreme Court of India in the judgment reported in (2008) 16 VST 181 (SC) (Steel Authority of India Limited Vs. Sales Tax Officer, Rourkela-I Circle and others) and further direct the second respondent to pass order afresh by discussing grounds in the appeal memorandum in Form X dated 05.10.2015, filed under Section 51 of the TNVAT Act, 2006.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.V.Haribabu
Additional Government Pleader.

O R D E R

This petition is filed to call for the records on the files of the second respondent in A.P.No.VAT.284/2015 dated 18.11.2016 and quash the same as being contrary to the principle laid down by the Honourable Supreme Court of India in the judgment reported in (2008) 16 VST 181 (SC) (Steel Authority of India Limited Vs. Sales Tax Officer, Rourkela-I Circle and others) and further direct the second respondent to pass order afresh by discussing grounds in the appeal memorandum in Form X dated 05.10.2015, filed under Section 51 of the TNVAT Act, 2006.

2. The petitioner has challenged the impugned order passed by the Appellate Deputy Commissioner (CT) in A.P.No.VAT.285/2015 vide order dated 18.11.2016. The Appellate Deputy Commissioner has partly allowed and partly rejected the appeal of the petitioner. The second respondent has upheld the demand of tax on the turnover of Rs.17,42,979/- at 5% based on deficit stock value noticed at the time of inspection of place of business of the petitioner by the enforcement wing. According to the petitioner the impugned order has been passed without considering the submission of the petitioner. The impugned portion of the order reads as follows:

> "However, though it is treated as a notional difference, the existence of the stock variation is not disagreed. Hence the actual stock difference arrived is found to be reasonable and hence it is to be sustained. In view of circumstances, I order that the levy of tax on actual stock difference arrived by the Assessing Officer as sustained."

3. It is noticed that the petitioner has an alternative and effective remedy before the Appellate Tribunal under Section 58 of the TNVAT Act against the impugned order. Therefore, the writ petition is dismissed with liberty to the petitioner to file an appeal within 45 days from the date of receipt of copy of this Order. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rst

To

1.The Commissioner Tax Officer,
Attur (Town) Assessment Circle,
Attur, Salem District.

2.The Appellate Deputy Commissioner (CT),
C.T.Building, Salem.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.103224
+1cc to the Special Government Pleader, S.R.No. 103285

W.P.No.16435 of 2017
and W.M.P.No.17773 of 2017

RGN(CO)
GN(28/01/2020)