BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **18.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)Nos.1232 and 1233 of 2019
and
C.M.P.(MD)Nos.10625, 10626 and 10628 of 2019
Against
WP(MD).Nos. 9638 & 9639 of 2016

M/s.Sri Balaji Traders,
Rep. by its Proprietor-U.S.Sanjeevi,
No.109/D7/1, Sankarlinga Moopanar Street,
Samusigapuram, Chatrapatti,
Rajapalayam-626 102,
Virudhunagar District. ... Appellant in both appeals

Vs.

The Commercial Tax Officer-1,
Rajapalayam,
Virudhunagar District. ... Respondents in both appeals

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letter Patent Act, to set aside the order passed by this Court in W.P.(MD) Nos.9638 and 9639 of 2016, dated 08.08.2019, respectively.

Prayer in WP(MD).Nos.9638 and 9639 of 2016 :
Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN: 33366041975/2009-10 dated 31.03.2016 quash the same.

For Appellant (in both appeals) : Mrs.R.Hemalatha

For Respondent (in both appeals) : Mr.S.Angappan
Government Advocate

COMMON JUDGMENT

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

Heard Mrs.R.Hemalatha, learned counsel appearing for the appellant and Mr.S.Angappan, learned Government Advocate appearing for the respondent.

2.By consent of both parties, these writ appeals are taken up for final disposal.

3.These appeals are directed against the common order, dated 08.08.2019 in W.P.(MD)Nos.9638 and 9639 of 2016. These writ petitions were filed challenging the assessment orders passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the assessment years 2009-10 and 2011-12. These writ petitions were dismissed on the ground that the appellant has not availed the statutory appellate remedy available under the Act.

4.After elaborately hearing the learned counsel appearing for the appellant and perused the petitions, we are of the considered view that it is a fit case where the dealer can be granted liberty to go before the assessing officer. Though it may be true that the appellant dealer did not file their objections to the pre-revision notice, dated 01.12.2015, we are inclined to take such a stand in the light of the decisions in the case of ***Althaf Shoes (P) Ltd Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6*** [(2012) 50 VST 179 (Mad)], in the case of ***Jinsasan Distributors Vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai*** [(2013) 59 VST 256 (Mad)] and in the case of ***Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another*** [(2013) 60 VST 283 (Mad)]. These decisions are forced into service by Mrs.R.Hemalatha to substantiate her argument that if the selling dealer though collected the tax, failed to remit the tax to the Government and it will not be a ground to revoke the input tax credit availed by the purchasing dealer. On going through the admitted facts, if the Court finds that there is an gross error on the part of the authority, the Court in exercise of its power under Article 226 of the Constitution of India, is entitled to correct such gross injustice, arbitrariness and error apparent on the face of it.

5.For the above reasons, we are inclined to interfere with the order passed in the writ petitions. Accordingly, these appeals are allowed and the order impugned in these writ petitions are set aside and consequently both parties are directed to treat the assessment orders dated 31.03.2016 as a show cause notice/pre-revision notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this judgment. On receipt of the said objections, the respondent/assessing officer shall afford an opportunity of personal hearing to the authorized representative of the appellant and re-do the assessment in accordance with law. The appellant is at liberty to place the decisions as relied on, before the assessing officer for consideration. In the light of the above orders, till the assessment is made in terms of the above directions, no cohesive action shall be initiated against the appellant for recover VAT Tax and penalty as, granted in the assessment orders dated 31.03.2016. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer-1,
Rajapalayam,
Virudhunagar District.

+2 CC to M/s.R.HEMALATHA, Advocate (SR-99368 & 99367)

+1 CC to M/s.SPL GP (SR-99965[F] dated 20/11/2019)

W.A.(MD)Nos.1232 and 1233 of 2019
18.11.2019

JMN(05.12.2019) 3P : 5C