IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NOS.10776 TO 10778 OF 2006
AND
W.P.M.P.NOS.12213 TO 12215 OF 2006

Tvl. Rasi Agrescots Pvt. Ltd.,
Rep. by its Managing Director,
R.Rajender, 23, Gandhi Nagar,
Attur,Salem District. ... Petitioner in all W.P.s

-vs-

1. The Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005.

2. The Deputy Commercial Tax Officer, Attur (Town) Assessment Circle, Attur.

... Respondents in all W.P.s

Prayer in W.P.No.10776 of 2006:-
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the First Respondent in Clarification No.147/2005 in D.Dis Acts Cell II/39022/05 dated 26.09.2005 and quash the same.

Prayer in W.P.No.10777 of 2006:-
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Second Respondent in CST No. 427810/2003-04 dated 28.02.2006 and quash the same.

Prayer in W.P.No.10778 of 2006:-
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Second Respondent in CST No. 3141126/2003-04 dated 28.02.2006 and quash the same.

For Petitioner : Mr.R.Senniappan (in all W.P.s)
For Respondents: Mr.A.N.R.Jayaprathap, Government Advocate (Taxes) (in all W.P.s)

C O M M O N O R D E R
(through video conference)

Heard Mr. R.Senniappan, Learned Counsel for the Petitioner and Mr.A.N.R.Jayaprathap, Learned Government Advocate (Taxes) for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition in W.P. No. 10776 of 2006 challenges the Order in Clarification No. 147/2005 in D. Dis Acts Cell II/39022/05 dated 26.09.2005 issued by the First Respondent clarifying that the hybrid cotton seeds are taxable at the rate of 4% under entry No. 6(iii) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act' for short).

3. The Writ Petition in W.P. No. 10777 of 2006 challenges the Order in CST No. 427810/2003-04 dated 28.02.2006 passed by the Second Respondent determining the liability of the Petitioner for the year 2003-2004 and levying penalty under Section 9(2A) of the Central Sales Tax Act, 1956 read with Section 12(3)(b) of the TNGST Act.

4. The Writ Petition in W.P. No. 10778 of 2006 challenges the Order in CST No. 3141126/2003-04 dated 28.02.2006 passed by the Second Respondent determining the liability of the Petitioner for the year 2003-2004 and levying penalty under Section 9(2A) of the Central Sales Tax Act, 1956 read with Section 12(3)(b) of the TNGST Act.

5. The grievance sought to be ventilated by the Petitioner in these Writ Petitions is that exemption has been denied for sale of hybrid cotton seeds for seeding purpose by pointing out that as per entry 7 of Part B in the Third Schedule of the TNGST Act, exemption is restricted only for sales for bacterial culture for agricultural purpose, organic manners and all kinds of seeds including green manure seeds, excluding oils seeds those described in Second Schedule of the TNGST Act, and that the claim of the Petitioner does not fall within its purview.

6. It is brought to notice that in respect of person similarly placed to the Petitioner, this Court in Tvl. Rasi Seeds (P) Ltd., -vs- Special Commissioner and Commissioner of Commercial Taxes, Chennai (Order dated 25.04.2019 in W.P. No. 10768 of 2006 etc., batch) has set aside the assessment order, where similar claim for exemption was refused, and the matter has been remitted for consideration afresh in the light of the principles laid down in that decision.

7. Inasmuch as it is not disputed by the Learned Government Advocate appearing for the Respondents that the Petitioner in these Writ Petitions is similarly placed to the Petitioner in W.P. No. 10768 of 2006, the Petitioner is entitled to the same benefit granted by this Court in Tvl. Rasi Seeds (P) Ltd., -vs- Special Commissioner and Commissioner of Commercial Taxes, Chennai (Order dated 25.04.2019 in W.P. No. 10768 of 2006 etc., batch). This would mean that the impugned Orders in CST No. 427810/2003-04 dated 28.02.2006 and CST No. 3141126/2003-04 dated 28.02.2006 passed by the Second Respondent shall stand set aside and the matter remitted to the Second Respondent for fresh consideration. It is incumbent upon the Second Respondent to afford full opportunity of personal hearing, follow the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions of the Petitioner with particular reference to the principles laid down in the decision in Tvl. Rasi Seeds (P) Ltd., -vs- Special Commissioner and Commissioner of Commercial Taxes, Chennai (Order dated 25.04.2019 in W.P. No. 10768 of 2006 etc., batch) passed by this Court, and pass reasoned order on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petitions are ordered on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Special Commissioner and Commissioner
   of Commercial Taxes, Chepauk,
   Chennai - 600 005.

2. The Deputy Commercial Tax Officer,
   Attur (Town) Assessment Circle, Attur.

+3cc to Mr.R.Senniappan, Advocate, S.R.No.38133, 38132, 38134
+1cc to the Special Government Pleader, S.R.No.38047

W.P.Nos.10776 to 10778 of 2006

AD(CO)
CS/03/12/2020