IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

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

W.P. No. 36640 of 2006
and
M.P. No. 2 of 2006
and
W.M.P. No. 9987 of 2019

N.Balamurugan
... Petitioner

-vs-

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

2. The Deputy Commercial Tax Officer,
Attur (Rural),
Attur. ... Respondents

Prayer:-
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 No. 147/2005 in D.Dis.Acts.Cell.II/39022/05 dated 26.09.2005 and connected records on the files of the Second Respondent in CST. 676385/2004-05 dated 05.05.2006 and quash the same.

For Petitioner : Mr. R.Senniappan

For Respondent : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. R.Senniappan, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Notice in CST No. 676385/2004-05 dated 05.05.2006 issued by the Second Respondent, which is evidently a show cause notice for which the Petitioner has been required to submit its explanation. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha (AIR 2012 SC 2250) and Life Insurance Corporation of India -vs- A.Masilamani [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion.

3. At the same time, it is brought to the notice of this Court by the Learned Counsel for the Petitioner that the claim for the benefit of exemption for sale of hybrid cotton seeds for seeding purpose as per Entry 7 of Part B in the Third Schedule of the TNGST Act, which was denied to a person similarly placed to the Petitioner as in this case, has been set aside by this Court 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) and the matter has been remitted for consideration afresh in the light of the principles laid down therein.

4. Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for this Court to interfere at this pre-mature stage of the matter.

5. It is incumbent upon the Petitioner to submit its explanation with all supporting documents and comply with the requirements as sought in the impugned order by 30.11.2020. The Second Respondent shall, after affording full opportunity of hearing, duly consider the explanation of the Petitioner, deal with the each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate decision taken under written acknowledgment. In the event of any decision entailing adverse civil consequences, it would be certainly open to the Petitioner to impeach the same before the proper forum in the manner recognized by law. Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

6. In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

2. The Deputy Commercial Tax Officer,
   Attur (Rural),
   Attur.

+1 CC to the Govt. Pleader(T) sr 35573.

W.P. No. 36640 of 2006

CP(CO)
SP(02/12/2020)