IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

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

W.P. No. 36774 of 2006
and
M.P. No. 2 of 2006

Tvl. Essar Seeds
Rep by its Proprietrix
R. Tharani
188/D2, Kamarajanar Road
Attur Town - 636 102
Salem District. ... Petitioner

-vs-

1. The Special Commissioner and
Commissioner of Commercial Taxes
Chepulk, Chennai - 5

2. The Deputy Commercial Tax Officer,
Attur (Town) Assessment Circle, 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 No. 427888/2003-04 dated 28.02.2006 and quash the same.

For Petitioner : Mr. R.Senniappan

For Respondent : Mr. A.N.R.Jayaprathap
Government Advocate

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 appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in CST No. 427888/2003-04 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 Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act' for short).

3. The grievance sought to be ventilated by the Petitioner in this Writ Petition 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.

4. 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.

5. Inasmuch as it is not disputed by the Respondents that the Petitioner in this Writ Petition 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 Order in CST No. 427888/ 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.

6. The Writ Petition is ordered on the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

kv/Maya/vjt

To

1.The Special Commissioner and
Commissioner of Commercial Taxes
Chepulk, Chennai - 5

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

+1cc to the Spl Government Pleader(Taxes) SR.35131

W.P. No. 36774 of 2006

BP(CO)
CB(02/12/2020)