IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.42095 OF 2006
&
M.P.NO.1 OF 2006

Tvl. Shasun Chemicals & Drugs Limited,
No.3 Duraisamy Road, T.Nagar,
Chennai 600 017 ... Petitioner

..vs..

The Commercial Tax Officer,
T.Nagar (South) Assessment Circle,
Chennai 600 028 ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TNGST 1540153/2002-2003 dated 29.09.2006 and quash the same as illegal and contrary to the judicial precedent and direct the respondent to follow the either decision passed by the Tamilnadu Sales Tax Appellate Tribunal (Additional Bench) Madras in Tax Appeal Nos.445 to 447 /2002 dated 03.10.2002.

For Petitioner : Mr.A.Thiyagarajan, Sr.Counsel, for, Mr.S.Ramesh Kumar
For Respondents : Mr.Hariharan, AGP (Taxes)

O R D E R

The petitioner originally challenged the orders of assessment for the years 1996-97, 1997-98 and 1998-99 on the ground that the liability to tax cannot be fastened under Section 3 (4) of the Tamil Nadu General Sales Tax Act, 1959, on the purchase of raw materials used for manufacture of goods within the State. The Tamil Nadu Sales Tax Appellate Tribunal quashed the said assessment orders and allowed the appeals in favour of the assessee/petitioner. Thereafter, for the assessment year 2003-04, the respondent again assessed the tax, contrary to the order passed by the Appellate Tribunal in respect of the earlier assessment years and issued notice, to which the petitioner submitted its objections on 27.04.2006 stating specifically that the issue raised had been decided in their favour by the Tribunal in T.A.Nos.445 to 447 of 2002, dated 03.10.2002 and the copy of the said judgment had also been enclosed. Without considering the same, the respondent passed the revised order, on 18.02.2006. The petitioner filed its objections dated 07.09.2006 without resorting to appeal remedy, with a request to drop the proceedings or else grant an opportunity of personal hearing. But without considering the same, the impugned notice dated 29.09.2006 for the year 2002-03 came to be issued by the respondent. Feeling aggrieved, the petitioner has filed this writ petition.

2. Heard the learned counsel for both sides, who jointly submitted that the issue involved in this writ petition is covered by a decision of this Court in the case of Tube Investments of India Ltd. v. State of Tamil Nadu, reported in 2010 SCC Online Mad 5145 : (2010) 36 VST 67, where in it is held that Section 3(4) of the Act will have no application since situs of the export sales of the petitioner for the purpose of the said Section was State of Tamilnadu and by virtue of the said factual position, the applicability of Section 3(4) of the Act stands excluded for the exigibility of tax.

3. A perusal of the materials available on record would disclose that the petitioner has submitted their objections on 07.09.2006 for the year 2003-04, but without considering the same and ignoring the orders, against the earlier assessment orders passed by the Tribunal, the impugned notice came to be issued for the year 2002-03 by the respondent herein. Hence, the matter is remanded back to the respondent for proper consideration of the objections dated 07.09.2006 filed by the petitioner as well as further objections, if any, to be filed within a period of two weeks from the date of receipt of a copy of this order and to pass appropriate orders, on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner by following the decision in Tube Investments of India Limited case, (2010) 36 VST 67) cited supra, within a period of six weeks thereafter.

4. Accordingly, this writ petition is disposed of. No costs. Consequently the connected MP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To

The Commercial Tax Officer,
T.Nagar (South) Assessment Circle,
Chennai 600 028

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.23504
+1cc to the Special Government Pleader, S.R.No.24027

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EV(CO)
CS/17/07/2020