IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.5334 & 5335 of 2008
and
M.P.Nos.1 & 1 of 2008

M/s. Sidharth Chemical Corporation,
Rep.by its erstwhile Partner Ajit Sivan,
A4, Achala Vihar A-1-116,
Anna Nagar, Chennai - 600 040.

... Petitioner in both WPs

Vs.

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai 600 010.

... Respondent in both WPs

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in its impugned proceedings in CST/630373/94-95 for CST-1994-95 and TNGST No.106288/94-95 for the year TNGST 1994-95 respectively and quash the exparte order dated 30.05.2006, being made contrary to the principles of natural justice and ultra vires the express provisions of the TNGST Act 1959 and the rules framed thereunder, and further direct the respondent to allow the claim under Sec.6(2)(b) of the CST Act 1956, following the ratio of the decision of this Hon'ble Court reported in 11 STC 655 and 2000 NTN (Vol.17)-875 in accordance with law.

For Petitioner : Mr.T.Ramesh Kutty
for Mr.K.Venkatasubramanian

For Respondent : Mr.Hariharan, AGP (T)

COMMON ORDER

Challenging the respective orders dated 30.05.2006 passed by the respondent, under the provisions of the CST Act and TNGST Act, relating to the Assessment Year 1994-95, the petitioner has come up with these writ petitions. By the impugned orders, the respondent determined the total and taxable turnover of the petitioner for the assessment year in question under the CST Act at Rs.60,30,888/- and under the TNGST Act at Rs.1,12,54,398/- confirming the original assessments and penalty made on 21.07.1997.

2.On 29.02.2008, while admitting these writ petitions, this Court has granted an order of interim stay, which is in force till date.

3.Upon notice, the respondent filed a separate counter affidavit, wherein, it is inter alia stated that without availing the remedy of appeal under Section 31 of the TNGST Act, 1959 before the Appellate Assistant Commissioner (CT) as against the assessment orders, the petitioner had straight away approached this Court with the present writ petitions; placing reliance on the decisions of the Supreme Court in Union of India v Tata Engineering and Locomotive Co. Ltd. [AIR 1988 SCC 287] and State of Goa and others v. Lankoplanat (India) Ltd [1997 (106) STC 118], as the issue involved herein is question of facts, the same should have been agitated before the statutory appellate authority and there is no reason for the assessee to by-pass the statutory remedy by approaching the High Court with a writ petition; and hence, the writ petitions deserve no merits and the same are liable to be dismissed in limini.

4.Though the petitioner raised many grounds assailing the orders impugned herein, the learned counsel for the petitioner, during the course of argument, restricted the same to the extent of seeking permission to the petitioner to file appeals before the Appellate Authority as against the assessment orders passed by the respondent herein.

5.The learned Additional Government Pleader (T) appearing for the respondent has no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the submissions now made by the learned counsel on either side, this Court permits the petitioner to file appeals along with stay applications before the Appellate Authority as against the orders impugned herein, within a period of three weeks from the date of receipt of a copy of this order. On such filing, the Appellate Authority shall entertain the appeals, without raising any issue relating to limitation and consider the stay applications and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of three weeks thereafter. Till such time, the respondent shall not make any recovery, pursuant to the assessment orders.

7.Registry is directed to return the original impugned orders to the petitioner, after substituting the xerox copy of the same.

8.Accordingly, these two writ petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai 600 010.

Copy To
The Section Officer,
ER Section, High Court,
Chennai.

+2cc to Mr.K.Venkatasubramanian, Advocate, S.R.No.23765
+1cc to the Special Government Pleader, S.R.No.24016

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SSI(CO)
CS/08/07/2020