IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition No.35664 of 2005

M/s. Arul Murugan Edible Oil (P) Ltd.
Rep. By Managing Director M.Mani,
No.824 RG Street, Coimbatore 641 001 ... Petitioner

..vs..

1. The Additional Appellate Assistant Commissioner of Commercial Taxes, Coimbatore
2. The Commercial Tax Officer, R.G.Street Circle, Coimbatore ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent herein to cancel the order passed in AP No.1151 of 2003, dated 13.10.2003 and pass fresh orders after following the Circular of the Special Commissioner and Commissioner of Commercial Taxes, dated 24.05.2002 and the judgment of the Division Bench of this Court reported in 129 STC 141.

For Petitioner : Mr. S.Rajasekar

For Respondents : Mr. Mohammed Shaffiq, Spl.G.P. (Taxes)

O R D E R

According to the petitioner, they are the dealers in edible oil and the assessee on the file of the second respondent. In respect of the assessment year 2001-2002, the second respondent completed the assessment by determining the total and taxable turnover of Rs.9,79,58,958/- and Rs.2,18,87,241/- as against the reported turnover of Rs.9,76,69,654/- and Rs.29,24,300/-. Aggrieved by the assessment order of the second respondent, the petitioner preferred an Appeal under Section 31 of the Tamil Nadu General Sales Tax Act, 1959, before the first respondent / appellate authority, claiming relief with regard to the disputed turnover of Rs.1,91,26,096/- and levy of penalty. The first respondent, by order dated 13.10.2003 has set aside certain turnovers and the consequential tax and partly allowed the appeal by remanding the matter to the second respondent for his consideration. As against the remand order passed by the first respondent, no appeal can be filed by the petitioner before the Sales Tax Appellate Tribunal. However, according to Section 38-A of the Act, the Tribunal has got special powers to revise the said order. Hence, seeking such direction, this writ petition has been filed by the petitioner.

2. Heard the learned counsel for both sides and perused the materials available on record.

3. The learned counsel for the petitioner submitted that even before passing the order on 13.10.2003 by the first respondent, the petitioner has filed a written argument on 07.10.2003 stating that the clarification dated 24.05.2002 was issued by the Special Commissioner and Commissioner of Commercial Taxes wherein it was clearly stated that the commodity transacted by the petitioner is exempted under Clause 17 of the said clarification, which was also referred to in the judgment of the Division Bench of this Court reported in 129 STC 141 (K.Arumuga Mudaliar and Co. v. The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai). Without looking into the same, the first respondent has remanded back the matter to the second respondent for consideration to certain extent.

4. The learned Special Government Pleader (Taxes) for the respondents fairly conceded that the second respondent would consider the claim of the petitioner, if the petitioner submits a fresh objection within the time stipulated by this Court.

5. In such view of the matter, to meet the ends of justice, this Court passes the following order :-

> "The petitioner is hereby directed to file objections, along with necessary documents within a period of two weeks from the date of receipt of a copy of this order. On receipt of the objections from the petitioner, the second respondent / authority shall consider the same and pass necessary orders, on merits and in accordance with law, that too after affording an opportunity of personal hearing to the petitioner, without being influenced by any of the observations by the appellate authority, within a period of four weeks thereafter."

6. Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III-MDU)

//True copy//

Sub Assistant Registrar

srk

To

1. The Additional Appellate Assistant Commissioner
   of Commercial Taxes, Coimbatore

2. The Commercial Tax Officer, R.G.Street Circle,
   Coimbatore

+1cc to Mrs.R.Hemalatha, Advocate SR.No.23867

+1cc to Special Government Pleader(Taxes) SR.No.24033

W.P.No.35664 of 2005

SVI(CO)
GMY(31/07/2020)