BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.(MD)No.15687 of 2020
and
W.M.P.(MD) Nos.13161, 13162 & 13164 of 2020
(Through Video Conference)

P.M.N.Traders,
Rep. By its Proprietor M.Mohamed Raffick,
No.40, New Street,
Manapparai,
Trichy 621 306 ... Petitioner

Vs

1) The Appellate Deputy Commissioner (ST) (FAC),
Trichy, State Bank Colony,
Trichy 620 001

2) The State Tax Officer,
Manapparai Assessment Circle,
Commercial Taxes Building,
Manapparai, Trichy District. ... Respondents

**PRAYER**: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent in its impugned proceedings made in A.P.Nos.89/2019/VAT dated 26.12.2019 and quash the same as illegal and arbitrary.

For Petitioner : Mr.J.Prasanna Kumar

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

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**O R D E R**

Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice for the respondents. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

2. This writ petition has been filed challenging the impugned order passed by the first respondent under section 27(1)(a) of the Tamil Nadu Value Added Tax Act 2006, wherein the petitioner was directed to pay tax at Rs.6,96,664/- and penalty under section 27(3)(c) of the Act at Rs.10,44,996/-.

3. It is the contention of the petitioner that 'Neem Fruits' are exempted from payment of tax under entry 28 of part B of Third schedule to the TNGST Act, 1959 which continues under the TNVAT Act, 2007. According to him, by inadvertence, the code number was wrongly mentioned as '771' in his returns, instead of '733'. According to the petitioner, the code '771' deals with the commodity 'seeds of all kinds other than oil seeds' and the correct code for 'Neem Fruit' is '733'. It is also the contention of the petitioner that the Commissioner of Commercial Taxes, by his clarification No.238/2004 dated 09.11.2004 has confirmed that 'Neem Fruit' is exempted from payment of tax.

4. According to the petitioner, by total non-application of mind, the second respondent has passed the impugned assessment order on 29.03.2019 calling upon the petitioner to pay tax in respect of the commodity 'Neem Fruit'. Aggrieved by the order dated 29.03.2019, passed by the second respondent, the petitioner preferred the statutory appeal before the first respondent. By order dated, 26.12.2019, the first respondent has confirmed the assessment order passed by the second respondent on 29.03.2019. Aggrieved by both the assessment orders, this writ petition has been filed.

5. Pursuant to the direction issued by this Court, the respondents have also filed their status report before this Court. As seen from the status report, the respondents have admitted that 'Neem Fruit', the commodity which is in issue, has been exempted from tax under entry No.28 of part B of Third schedule to the TNGST Act, 1959, which is applicable for TNVAT Act, 2007 also.

6. Despite the fact that 'Neem Fruit' is exempted from payment of Value Added Tax, the first respondent as well as the second respondent have called upon the petitioner to pay tax only on the ground that wrong code number was mentioned in his returns. Instead of code number '733', which is applicable to 'Neem Fruit' , the petitioner has wrongly quoted code number '771'. Despite intimating the respondents that only due to inadvertence, a wrong code number was mentioned, by total non-application of mind to the reply dated 29.03.2019 submitted by the petitioner, the assessment order has been passed by the second respondent and the first respondent has also confirmed the same.

7. The learned counsel for the petitioner, on instructions would also submit that even during the personal hearing, the petitioner had pointed out to the second respondent that only by inadvertence, wrong code number was mentioned and since the commodity involved is 'Neem Fruit', they are entitled for exemption from payment of tax as per the circular of the Commercial Taxes Department.

8. This Court has also perused and examined the impugned assessment orders as well as the status report submitted by the

respondents before this Court on the directions issued by this Court. It is an admitted fact as seen from the status report that 'Neem Fruit' is exempted from payment of VAT as per the circular issued by the Commercial Taxes Department referred to supra.

9. It is also an admitted fact that as seen from the impugned assessment order, the petitioner has quoted a wrong code number while filing his returns before the respondents. The second respondent has assessed the petitioner for payment of tax as well as penalty, only due to the fact that the code number mentioned by the petitioner in his returns attracts tax. However, when it is an admitted fact that the petitioner has only dealt with 'Neem Fruit', which is an exempted commodity from payment of tax, the first respondent as well as the second respondent under the impugned assessment orders, by total non-application of mind, have failed to take note of the fact that the commodity involved is exempted from payment of tax. Just because a wrong code number was given, the respondents ought not have rejected the request of the petitioner from getting exemption.

10. This Court is of the considered view that arbitrarily and by total non-application of mind, the impugned assessment orders have been passed by the first and second respondents.

11. For the foregoing reasons, the impugned assessment orders passed by the first and second respondents are hereby quashed and accordingly, this writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Sts

Note:*In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.*

To

1) The Appellate Deputy Commissioner (ST) (FAC),
Trichy, State Bank Colony,
Trichy 620 001

2) The State Tax Officer,
Manapparai Assessment Circle,
Commercial Taxes Building,
Manapparai,
Trichy District.

+1 CC to the SPL GP SR-22631.
+1 CC to Mr.J.PRASANNA KUMAR, Advocate SR-22744.

Order made in
**W.P.(MD)No.15687 of 2020**
Dated:
**23.11.2020**

TP(CO)
CS(17.12.2020) 4P 5C