IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11297 of 2012

and M.P.No.1 of 2012

Christian Medical College Vellore Association
Ida Scudder Road,
Vellore 632 004,
Rep. By its General Superintendant. ..Petitioner

Vs.

1.State of Tamil Nadu,
Rep. By its Secretary,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai 600 005.

2.Commercial Tax Officer,
Group-II, Enforcement Wing Vellore,
C.T.Building No.4, Bharathiar Street,
Fort Round, Vellore 4. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the impugned proceedings i.e., the Letter dated 12.09.2011, Ref: A3/184/2011 and consequent Letters dated 04.10.2011, Ref: A3/184/2011 and dated 23.02.2012, Ref: A3/184/2011 issued by the 2nd Respondent demanding payment of VAT under the Tamil Nadu Value Added Tax Act, 2006 as the same are arbitrary, illegal, contrary to law and suffer from errors apparent on the face of the records and forbear the Respondents from seeking to levy and collect VAT from the Petitioner Institution on the disposal of scrap and discarded materials.

For Petitioner: Mr. Krishna Srinivasan
for M/s.S.Ramasubramaniam and Associates

For Respondents: Mr. V.Nanmaran
(Government Advocate)

ORDER

The writ on hand is filed to quash the impugned proceedings issued in letter dated 12.09.2011 and the consequent letters dated 04.10.2011 and 23.02.2012, issued by the 2nd respondent, demanding payment of VAT under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, 'the TNVAT Act').

2.The petitioner-Institution was established in 1900, by Dr.Ida.S.Scrudder, a Missionary, who was challenged to provide health care for women and children of India. The facts regarding the functioning of the petitioner Institution are not disputed by the respondents. Undoubtedly, the petitioner is providing good services to the society at large. However, the issue raised in this Writ Petition is regarding payment of Sales Tax under the provisions of the TNVAT Act.

3.The learned counsel appearing for the petitioner, strenuously contended that the petitioner-Institution was exempted from payment of Sales Tax and relied upon the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal, (Main Branch), Madras, dated 27th April, 1976, in Tribunal Appeal Nos.987, 996, 998, 997, 1231 and 1232 of 1975. The Tribunal made observation that the appellant-Institution is not a dealer and it is not in business. In paragraph No.16 of the order, the following observations are made:

> "16.Hence, the only further question that would arise for consideration is whether sales of miscellaneous goods would be liable to tax since we have found that “ales” are involved. The amount involved is about Rs.20,000/- or less for each year. Actually even if we were to hold that the appellant is a dealer, the sales of miscellaneous articles will not be liable for most of the year except for assessment year 1969-70 and 1970-71 besides 1973-74 (because of typewriter sale), since the total turnover of such items falls below Rs.25,000/- for other years. For assessment year 1969-70 and 1970-71 there is marginal liability since the limit then was Rs.15,000/-. Of course, in the view taken here, there are no sales of drugs or other articles involved. At any rate, having held that the appellant is not a dealer and it is not in business. It is immaterial for us to consider whether the sales of discarded materials are sales which are incidental, ancillary or in connection with any business. In this view, we do not go into the break-up of such receipts and give

any specific finding. Which in our opinion, is unnecessary in view of our earlier findings. The authorities have merely included all miscellaneous receipts. Even if the appellant were a dealer it would have been necessary to show that these receipts are incidental, ancillary, or in connection with the appellant's business."

4.Pursuant to the orders passed by the Tribunal in the year 1976, the Commissioner of Commercial Taxes also passed an order of exemption in proceedings dated 05.08.2005 and therefore, the orders impugned now are passed directly in violation of the orders passed by the Tribunal, as well as the exemption granted by the Commissioner of Commercial Taxes and thereafter, by the Government in letter dated 29.12.2006.

5.The learned counsel appearing for the petitioner contended that the petitioner-Institution is not attracted and therefore, they are not liable to pay Sales Tax as claimed through the impugned order. The categories contemplated in Explanation (iii) to Section 2(15) of the TNVAT Act are unconnected with the petitioner-Institution and therefore, the basis on which the impugned orders have been passed is unsustainable. This apart, the respondents have not considered the exemption already granted by the department, pursuant to the orders of the Tribunal passed in the year 1976.

6.The learned counsel for the petitioner referred the impugned order dated 23.02.2012 as well as the reasons stipulated in the impugned orders, which are contradictory with the provisions of the TNVAT Act as well as the exemption already granted. Thus, the impugned orders are liable to be set aside.

7.The learned Government Counsel appearing on behalf of the respondents disputed the said contentions by stating that the petitioner-Institution is falling under the definition of “dealer” and more specifically, Section 2(15)(iii) enumerates that "a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed". Therefore, the petitioner-Institution is also falling under the definition of “dealer”, as far as auctioning of the metal scraps, waste paper, empty bottles, plastic items, etc. When they are falling under the definition of “dealer”, as far as these items are concerned, the reference made regarding the order passed by the Tribunal is inapplicable with reference to the impugned orders passed now. The learned Government Counsel appearing on behalf of the respondents drawn a difference between the exemption granted as well as the Sales

Tax imposed through the impugned orders. It is contended that the exemption granted by the Tribunal are with reference to the miscellaneous articles and there was no exemption as far as the metal scraps, empty bottles, waste papers, plastic items, etc. Thus, the Tribunal's order is of no avail for the purpose of setting aside the impugned orders now passed, which is in accordance with the provisions of the Act.

8.The respondents have stated that the order of STAT (MB) Madras has held that the institution is not a dealer. However, the society or body, corporation has been included in the category of "dealer" with effect from 01.07.2002. Under TNVAT Act, as per Explanation iii (XI) to Section 2(15) of the TNVAT Act, the Institution falls under the category of "dealer" and the "dealer" is liable to pay tax. It is contended that there are many changes subsequent to the orders of Tribunal in the year 1976. Thus, the observations or the principles laid down by the Tribunal in its orders in the year 1976 cannot be considered at this length of time. It is contended that the Tribunal, in its order at Page Nos.19 and 20, "no doubt sale did take place" and "no sale involved for most-part of the sales except in the case of miscellaneous articles. Thus, the Department at present is not insisting to pay tax on sale of medicines but of miscellaneous articles which is exceeding threshold limit". No doubt, the petitioner-Institution has been granted exemption on certain areas being medicines, artificial limbs, but, not for occasional disposal of miscellaneous items. Though the petitioner has narrated the nature of transaction, the nature of its business activities stating that the dealer is not engaged in the business of disposing scrap articles/goods and those are merely incident, it is true that the department insisted Christian Medical College and Hospital to pay tax not on the business man, but on the auctioneer, who was brought under the category of dealer as per Section 2(15) of the TNVAT Act along with Explanation (iii)(IX). It is contended that the primary function of non-profit health care and medical education with noble principles and beliefs is nothing to do with the statutory requirement.

9.Considering the arguments as advanced on behalf of the respective parties to the lis on hand, this Court is of the considered opinion that the contention of the petitioner for grant of consumption is also well defended by the respondents. However, certain facts if at all the petitioner is of the opinion were not considered by the respondents in the impugned order, the said order is to be taken by way of an appeal before the appellate authority. The act provides an appeal to the Appellate Deputy Commissioner under Section 51 of the TNVAT Act. Section 58 provides appeal to the Appellate Tribunal and thereafter, the appeal or revision before the High Court under

Sections 59 or 60 as the case may be. When the statutory remedies are available to the petitioner to redress the grievances with reference to certain facts as well as the legal grounds raised, it is not appropriate on the part of the High Court to adjudicate such issues in the absence of documents and material evidences. Further, the importance of the appellate remedy to be exhausted under the statute can never be undermined by the High Court and more so, the appellate authorities are the final fact finding authorities. Thus, exhausting the appellate remedy is of paramount importance. No doubt, the findings of the appellate authority would be of greater assistance to the High Court for the purpose of exercise of the power of judicial review under Article 226 of the Constitution of India.

10.In the present case, the petitioner is claiming certain benefits by interpreting the provisions of the TNVAT Act and based on certain facts. However, the facts are distinguished by the respondents and they are not disputing the exemption granted with reference to the medical equipments. However, they are disputing the facts with regard to auctioning the waste papers, metal scraps, etc. Thus, the distinction in this regard is to be looked into with reference to the facts and circumstances. Thus, if at all the petitioner has any grievances in respect of imposing of taxes, it is for them to prefer an appeal before the appellate authority in proper form and by complying with the procedures contemplated under the Act. In the event of filing any appeal before the appellate authority, the same may be disposed of on merits and in accordance with law and by affording opportunity to the petitioner, as expeditiously as possible.

11.Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gsa

To

1.The Secretary,
State of Tamil Nadu,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai 600 005.

2.Commercial Tax Officer,
Group-II, Enforcement Wing Vellore,
C.T.Building No.4, Bharathiar Street,
Fort Round, Vellore 4.

+1cc to M/s.S.Ramasubramaniam and Associates, Advocate
SR.No.30657

W.P.No.11297 of 2012

GPL(CO)
GMY(20/07/2021)