IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.2.2021
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA
Writ Petition No.19179 of 2003 & WPMP.No.23979 of 2003

M/s.The Dharmapuri District
Cooperative Spinning Mills Ltd.,by the Administrator
Uthangarai-635207 ...Petitioner

Vs

1.The State of Tamil Nadu, rep.by
the Secretary, Department of
Commercial Taxes and Religious
Endowments, Fort.St.George,
Chennai-9.

2.The Deputy Commercial Tax Officer,
Arur.

3.The Registrar, Tamil Nadu Taxation
Special Tribunal, Singaravelar
Maligai, Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in O.P.No.964 of 2002 dated 21.3.2003, quash the same as illegal and consequently direct the second respondent to rectify the order of re-assessment dated 23.8.1999.

For Petitioner : Mr.S.Rajesh
For Respondents 1 & 2 : Mrs.G.Dhanamadhri, GA

Order of the Court was made by by T.S.SIVAGNANAM,J

We have heard Mr.S.Rajesh, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate appearing for respondents 1 and 2.

2. The petitioner challenged the order passed by the third respondent (for brevity, the Tribunal) in O.P.No.964 of 2002 dated 21.3.2003.

3. The proceedings, which were impugned before the Tribunal , were (i) the reassessment order dated 23.8.1999 passed by the second respondent passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short the Act) for the assessment year 1993-94 and (ii) the consequential recovery notice dated 26.8.2002. Though such was the prayer sought for before the Tribunal, the Tribunal was of the view that the petitioner did not question the reassessment order dated 23.8.1999 by filing a regular appeal under the Act and the notice having been served on the petitioner and they having not given any reply or objections to the same, held that the consequential demand notice could not be interfered with.

4. On a perusal of the impugned order, we find that the Tribunal did not go into the merits of the matter. In fact, we are of the view that the Tribunal could have done such an exercise because both the recovery notice dated 26.8.2002 as well as the reassessment order dated 23.8.1999 were challenged before the Tribunal. The power of the Tribunal under Section 55 of the Act is not restricted and the Tribunal would be justified in exercising the power if it finds any error apparent on the face of the records.

5. Be that as it may, the petitioner is a cooperative society and they furnished full particulars as to how the reassessment order was not justified. We find such averments not only in the petition filed before the Tribunal, but also in the affidavit filed in support of this writ petition. Hence, we are of the view that the petitioner should be granted one more opportunity to go before the Assessing Officer, place all the records and establish their case. For such a reasoning, we are inclined to interfere with the order passed by the Tribunal, the reassessment order dated 23.8.1999 and the recovery notice dated 26.8.2002.

6. In the result, the writ petition is allowed, the impugned order passed by the Tribunal is set aside. Further, the reassessment order dated 23.8.1999 and the recovery notice dated 26.8.2002 are also set aside. The matter is remanded to the Assessing Officer for a fresh consideration. The petitioner is directed to treat the reassessment order dated 23.8.1999 as a show cause notice and submit their detailed objections duly supported by records. On receipt of the objections, the

Assessing Officer shall afford an opportunity of personal hearing to the authorized representative of the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected WPMP is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.The Secretary to Government of Tamil Nadu, Department of Commercial Taxes and Religious Endowments, Fort.St.George, Chennai-9.
2.The Deputy Commercial Tax Officer, Arur.
3.The Registrar, Tamil Nadu Taxation Special Tribunal, Singaravelar Maligai, Chennai-1.

+1 cc to M/s.Special Government Pleader(Taxes sr8552
+1 cc to M/s.S.Sivanandam Advocate sr8408

W.P.No.19179 of 2003 &
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