IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.24764 of 2004
and WMP No.30127 of 2004

Tvl.S.R.Thangamaligai,
Rep. By V.Balasundaram,
Managing Partner,
39, Cross Cut Road,
Gandhipuram, Coimbatore. ...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. By the Commissioner and
Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai – 600 009.

2. The Sales Tax Appellate Tribunal,
Commercial Taxes Building,
Dr. Balasundaram Road,
Coimbatore – 18.

3. The Appellate Assistant Commissioner,
(CT), Main
Commercial Taxes Building,
Dr. Balasundaram Road,
Coimbatore – 18.

4. The Commercial Tax Officer,
Ram Nagar Assessment Circle,
Coimbatore. ...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Declaration, declaring the words, "Provided further that no appeal filed by any person objection to an order passed:- (a) under sub-section (3) of section 31 shall be entertained unless it is accompanied by satisfactory proof of the payment of the tax as ordered by the Appellate Assistant Commissioner." in section 4 of the Tamil Nadu General Sales Tax (Fourth) Amendment Act, 1999 being Act No.14 of 1999 to be violative of the petitioners' fundamental right to carry on business and trade, right to life and personal liberty and due process of law guaranteed under Article 19(1)(g), Article 21 and Article 265 of the Constitution of India and therefore unconstitutional, invalid and illegal.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.V.Veluchamy
Government Advocate

O R D E R

The learned counsel for the petitioner made a submission that the relief sought for in the writ petition is to declare the provisions of the Tamil Nadu General Sales Tax (Fourth) Amendment Act, 1999 is violative of the fundamental right of the petitioner to conduct free trade.

2. The liability to pay the tax admittedly was confirmed by the Court. However, the learned counsel for the petitioner states that in respect of the disputed tax amount, the petitioner preferred an appeal and the said appeal was returned on the ground that the petitioner has not deposited the tax at the time of filing the appeal. In other words, the pre-deposit condition contemplated under the Act had not been complied with and accordingly, the appeal was returned.

3. In view of the fact that the writ petition is to be disposed of now and the liability are also confirmed, the petitioner has to challenge the disputed amount of tax by representing the appeal already filed by him before the competent Court. While representing the appeal, the petitioner is directed to comply with the pre-deposit condition contemplated under the provisions of the Act and the appellate authority on verification of compliance of such conditions, shall entertain the appeal and decide the same on merits and in accordance with law.

4. With the above directions, the writ petition stands disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner and Secretary to Government,
   State of Tamil Nadu, Commercial Taxes Department,
   Fort St. George,
   Chennai - 600 009.

2. The Sales Tax Appellate Tribunal,
   Commercial Taxes Building,
   Dr. Balasundaram Road,
   Coimbatore - 18.

3. The Appellate Assistant Commissioner,
   (CT), Main, Commercial Taxes Building,
   Dr. Balasundaram Road,
   Coimbatore - 18.

4. The Commercial Tax Officer,
   Ram Nagar Assessment Circle,
   Coimbatore.

+1cc to the Special Government Pleader(Taxes), S.R.No.47656

WP No.24764 of 2004

PCH[co]
NSK 20/10/2021