IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2021

Coram:

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.P.Nos.35608 & 35609 of 2005
and
W.M.P.Nos.38413 & 38414 of 2005

M/s.Kothari Industrial Corporation Ltd.,
Represented by its Director
(Fertilizer Division),
114, Mahatma Gandhi Road,
Chennai - 600 034. ...Petitioner in both cases

Vs

1. The Tamil Nadu Sales Tax
Appellate Tribunal (Main Bench),
Rep. by its Secretary,
City Civil Court Buildings,
Chennai - 600 104.

2. The Assistant Commissioner (CT),
Central Assessment Circle - III,
PAPJM Buildings, Greams Road,
Chennai - 600 006. ...Respondents in both cases

PRAYER in W.P.No.35608 of 2005: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in T.A.No.405 of 2001, and quash the order dated 19.09.2005 and further direct the second respondent to pass fresh assessment order for the assessment year 1990-91 after affording enough opportunity to the petitioner to prove their case.

PRAYER in W.P.No.35609 of 2005: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in T.A.No.458 of 1997 and quash the order dated 28.09.2005 and further direct the second respondent to pass fresh assessment order for the assessment year 1991-92 after affording enough opportunity to the petitioner to prove their case.

For Petitioner: Mr.R.L.Ramani, SC
for Mr.K.J.Chandran

For Respondents: Mr.Mohammed Shaffiq, Spl. GP

COMMON ORDER
(Made by T.S.SIVAGNANAM,J.)

We have heard Mr.R.L.Ramani, learned Senior Counsel appearing on behalf of the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the respondents.

2. The orders impugned in the writ petitions are the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal ('Tribunal' for brevity), which affirmed the orders passed by the Appellate Deputy Commissioner, who has confirmed the orders of assessment passed by the second respondent, the Assessing Officer, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 ('TNGST Act' for brevity) and the Central Sales Tax Act, 1956 ('CST Act' for brevity) for the years 1990-91 and 1991-92.

3. The only issue in the instant case was whether the plea raised by the petitioner-dealer that the transactions were stock transfers
was established by the petitioner-dealer before the Assessing Officer.

4. On a reading of the assessment orders as well as the orders of the first appellate authority and the Tribunal, we find that the Assessing Officer has rejected the stand taken by the dealer that it is a case of stock transfer on the ground that the dealer has failed to establish the same by production of documents.

5. As could be seen from the relevant dates and events, on 12.03.1996, a notice was issued to the dealer based on D-3 proposal, wherein the Assessing Officer proposed to disallow the claim of exemption on branch transfer and directed them to show cause on or before 27.03.1996. On 21.03.1996, copies of the D-7

records were furnished to the dealer. It is not in dispute that the dealer submitted his preliminary objections on 27.03.1996 and requested for further time to submit detailed objections, since they have received the copies of the D-7 records only on 21.03.1996. Admittedly, there is no separate order passed by the Assessing Officer either accepting or rejecting the request for grant of time. But, what the Assessing Officer did was, completed the assessment order by order dated 29.03.1996 and this order stood confirmed by the first appellate authority and the Tribunal. Thus, the petitioner stood shut out by the authorities as well as the Tribunal on the ground that they were unable to substantiate their claim for exemption on branch transfer.

6. The learned Senior Counsel appearing for the petitioner would submit that the records are available with the dealer and had the Assessing Officer granted reasonable time to enable the petitioner to place the relevant records, in all probabilities, the stand taken by the dealer would have been accepted by the Assessing Officer himself in its entirety. Furthermore, it is submitted that the law on the subject with regard to filing of requisite forms in terms of Section 6A of the CST Act stood settled by the Hon'ble Supreme Court in the decision in Ashok Leyland Limited Vs. State of Tamil Nadu [(2004) 134 STC 473]. It is submitted that this judgment was delivered by the Hon'ble Supreme Court on 07.01.2004, whereas the assessment orders in the cases on hand were passed much earlier to the said order.

7. In the light of the above factual and legal position, we are of the considered view that the petitioner-dealer should be granted one more opportunity to establish their stand that it is a case of a branch transfer. If the dealer is able to substantiate the same by production of relevant documents, it goes without saying that the Assessing Officer can examine those records and arrive at a fresh decision. To shut out the dealer by not granting sufficient time to produce the statutory forms, would amount to violation of the principles of natural justice.

8. Further, we are informed that there are may circulars issued by the Commissioner of Commercial Taxes Department as to how the dealer has to be dealt with when there is a delay in submission of statutory forms such as Form-F declaration, Form-C declaration and Form-D declaration, etc. These circulars should also be borne in mind by the Assessing Officer while redoing the assessment.

9. For the above reasons, the writ petitions are allowed and the impugned orders passed by the Tribunal are set aside and the matters are remanded back to the second respondent-Assessing Officer to redo the assessments afresh, after affording an

opportunity of personal hearing to the authorized representative of the petitioner and give them reasonable time to produce the necessary documents and the assessments be redone in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

/TRUE COPY/

Sub-Assistant Registrar

hvk
To

1. The Secretary,
   The Tamil Nadu Sales Tax
   Appellate Tribunal (Main Bench),
   City Civil Court Buildings,
   Chennai - 600 104.

2. The Assistant Commissioner (CT),
   Central Assessment Circle - III,
   PAPJM Buildings, Greams Road,
   Chennai - 600 006.

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 18174

W.P.Nos.35608 & 35609 of 2005
and
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PMK(CO)
KKN 20.04.2021