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.No.39256 of 2005
and
W.M.P.No.42079 of 2005

Chettinad Cement Corporation Ltd.,
Represented by its Company Secretary
S.Hariharan, 603, Anna Salai,
Chennai - 600 006. ...Petitioner

Vs

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

2. The Deputy Commissioner (CT)
(Appeals),
III Floor, Wavoo Complex,
191, N.S.C. Bose Road,
Chennai - 600 001.

3. The Sales Tax Appellate
Tribunal (Main Bench),
Represented by its Secretary,
City Civil Court Building,
High Court Complex,
Chennai - 600 104. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to call for the records on the files of the third respondent herein in T.A.No.243 of 2000 dated 21.10.2005 and issue a Writ of Certiorari quashing the order of the third respondent herein in T.A.No.243 of 2000 dated 21.10.2005.

For Petitioners: Mr.N.Inbarajan

For Respondents: Mr.Mohammed Shaffiq, Spl. GP

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

This writ petition has been filed challenging the order passed by the Sales Tax Appellate Tribunal (Main Bench) in T.A.No.243 of 2000 dated 21.10.2005.

2. The appeal filed by the writ petitioner-dealer was dismissed by the Tribunal and the order passed by the Assessing Officer levying purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act, 1959 ('TNGST Act' for brevity), as confirmed by the first appellate authority, was confirmed by the Tribunal.

3. So far as the assessability of the said transaction, namely purchase of fly ash, is concerned, in the light of the decision of the Division Bench of this Court in the case of India Cements Limited Vs. State of Tamil Nadu [(2012) 51 VST 256 (Mad)], the appellant cannot contest the same and therefore, to that extent, the order passed by the Tribunal is sustainable.

4. With regard to the levy of penalty, we have seen from the assessment order, dated 21.08.1992, the turn over was assessed by taking the material from the books made available by the assessee and there is no allegation of any suppression on the part of the assessee. That apart, in the decision in India Cements Limited, though the dealer therein had lost before the Hon'ble Supreme Court with regard to the assessability of the transaction under Section 7-A, the Tribunal themselves, in the case of India Cements Limited, had vacated the penalty, after taking into consideration various decisions including the decisions of this Court.

5. At this juncture, we are required to take note of the decision of the Hon'ble Division Bench of this Court in the case of Appollo Saline Pharmaceuticals Vs Commercial Tax Officer [(2002) 125 STC 505], which had considered under what circumstances, penalty can be imposed. The case on hand will squarely fall within the exceptional circumstances mentioned in the said decision. Therefore, we find there is absolutely no justification for the levy of penalty.

6. For the above reasons, the writ petition is partly allowed and the order passed by the Tribunal is confirmed to the

extent it has levied penalty under Section 7-A of the TNGST Act. However, the penalty, which has been imposed on the petitioner-dealer, stands vacated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

/TRUE COPY/

Sub-Assistant Registrar

hvk
To

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Chennai - 600 104.

+1CC TO MR.N.INBARAJAN, ADVOCATE, SR.NO. 17840

W.P.No.39256 of 2005
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PMK(CO)
KKN 19.04.2021