IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.3984 & 3986 of 2020
and
WMP. Nos.4727 & 4729 of 2020

Gayathri Agency,
(Represented by its Proprietor P.Palanivel),
AKP Complex Athanoor Village, Rasipuram Tk,
Namakkal 636 301. ...Petitioner in both WPs

Vs.

Assistant Commissioner (ST),
Rasipuram Circle,
Namakkal District. ... Respondent in both WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records on the files of the Respondent herein in Unregistered Dealer dated 31.12.2019 for the assessment year 2000-2001 and 2001 -2002 quash the same.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.ANR Jayaprathap
Government Advocate

C O M M O N O R D E R

The petitioner is a commission agent engaged in the business of procuring orders for several products including maize, bajra, jowar and deoiled rice bran within the State, for vendors located outside the State of Tamil Nadu. It also acts as a broker for groundnut deoiled cake, sunflower deoiled cake, soya deoiled cake and rape seed deoiled cake.

2. I consciously desist from referring further to the nature of activities carried out by the petitioner, since this involves an exercise of fact finding that I will not concern myself with in terms of Article 226 of the Constitution of India. Suffice it to say that while the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') brings within its purview brokers

and commission agents as dealers, a distinction has been brought about between dealers, who are merely carrying on business as procurement agents and those who engage in stocking of goods as well.

3. The challenge in these writ petitions is to two orders of assessment and the short point argued is that the assessments have been finalized without affording an opportunity to the petitioner to look into the D7 records to which the petitioner claims that it is entitled. This also finds support from Circular No.7/2017 issued by the Principal Secretary/Commissioner of Commercial Taxes dated 03.02.2012 wherein the Commissioner at paragraph 1, reiterates the necessity of affording full opportunity of hearing to an assessee prior to finalizing an assessment.

4. In this matter, a request had been made for D7 records as early as in 2007 and the records were, admittedly, photo copied and handed over to the petitioner. Vide letter dated 30.10.2019, the petitioner sought another copy of the records on the ground that the earlier copies had been given to its advocate, who had misplaced the same.

5. The authorities have permitted the petitioner to inspect and verify the records in their premises, rejecting the request for furnishing copies yet again. I set aside the assessment solely in the interests of substantial justice, and to afford full compliance with the provision of natural justice, and direct that a copy of the D7 records be furnished to the petitioner upon its remitting appropriate costs, within a period of two weeks from today.

6. The petitioner will appear before the Authority on 25th of March, 2021 and, after hearing the petitioner, an order of assessment shall be passed within a period of four weeks i.e. 26.04.2021. No further notice need be issued in this regard. It is for the petitioner to make arrangements to approach the authorities and obtain the copies within the period as aforesaid at cost, and if no attempt is made in this regard, the impugned order of assessment shall stand revived.

7. This writ petition is disposed in the above terms. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ska
To

Assistant Commissioner (ST),
Rasipuram Circle, Namakkal District.

+1cc to M/s.N.Inbarajan, Advocate Sr.12282
+1cc to the Special Government Pleader Sr.12526

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srg 18/03/2021