IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021
PRONOUNCED ON : 18.11.2021

THE HONOURABLE TMT.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2573 OF 2021
IN
W.P.NO.2935 OF 2016
AND
C.M.P.NO.16785 OF 2021

M/s.Suriya Chemicals,
Rep. by its Proprietor,
P.Jeevanandam,
3/7E, Mel Road, Vanavasi,
Salem-636 457, Salem District. ...Appellant

Vs

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur. ... Respondent

PRAYER:

This Writ Appeal is filed under Clause 15 of Letters Patent praying to set aside the order dated 15.06.2021 passed in W.P.No.2935 of 2016 and W.M.P.No.1919 of 2016.

Prayer in W.P.No.2935 of 2016:

Petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records on the files of the respondent in TNGST. 3243574/2003-04 dated 28.08.2014 and quash the same as being contrary to the principles of natural justice and that of the principle laid down by this Honourable Court in the judgment reported in (2005) 142 STC 130 (T.M.Rajaganapathi Traders Vs. Commercial Tax Officer Salem)

For Appellant : Mr.R.Senniappan

For Respondent : Mr.V.Nanmaran
Government Advocate

JUDGMENT

MOHAMMED SHAFFIQ,J.

The appellant is an assessee under the Tamil Nadu General Sales Tax Act, 1959 (for brevity, The TNGST Act), for the Assessment year 2003-04, the appellant had reported nil turnover in its returns. An Assessment was made fixing the total taxable turnover at Rs.7,92,03,689/- and nil respectively vide order dated 26.06.2009. The place of business of the appellant was inspected by the Enforcement Wing during the course of such inspection, it was found that certain purchases were not accounted for and further local sales was camouflaged as inter-state sales. In view of the above discrepancies an estimate was made to the best of judgment of the Assessing Officer.

2. The said order of assessment was challenged before this Hon'ble Court under Article 226 of the Constitution of India in W.P.Nos.8035 and 8036 of 2012 on the premise that the said orders of assessment suffered from violation of principles of natural justice inasmuch as copies of documents relied upon by the respondent/Appellate Authority was not furnished despite a specific request, by the appellant. The Writ Court was pleased to set aside the order of Assessment with the following direction

> " direction to the Assessing Officer to give opportunity to the petitioner to substantiate their case. Further, the respondent is also directed to furnish all the necessary documents relied on by them to the petitioner and pass fresh assessment orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order. The petitioner is also directed to co-operate with the respondent for concluding the proceedings without taking unnecessary adjournments."

3. Pursuant to the above orders of this Hon'ble Court, the appellant has admittedly been furnished with the following documents:

i)Extract of purchases
ii)Copies of purchase bills
iii)Copies of Delivery Notes
iv)Statement of Recorded during Inspection

Further, the appellant in its statement dated 07.11.2012, while admitting that the above documents have been furnished, requested certain other details. Thereafter, requests were made by the appellant to furnish copies of records relied upon in the

Assessment order vide letters dated 13.12.2012 and 20.07.2013 stated to have not been furnished thus for.

4. The respondent had thereafter passed an order vide TNGST No.3243574/2003-04 dated 28.08.2014. The same was challenged in W.P.No.2935 of 2016 on the premise that the same is contrary to the principles of natural justice and contrary to the principle laid down by this Hon'ble Court in the Judgment reported in (2005) 142 STC 130 (T.M.Rajaganapathi Traders, Vs. Commercial Tax Officer, Salem).

5. The learned Single Judge on hearing the appellant had relegated and disposed of the Writ petition on the ground of existence of alternative remedy by way of Statutory Appeal and has observed that the appellant can obtain the documents relied upon, but, not furnished by the Assessing Officer / respondent from the Appellate Authority.

6. The above order of the learned Single Judge in W.P.No.2935 of 2016 dated 15.06.2021 is challenged on the limited ground that relegation to Appellate Authority is erroneous inasmuch as failure to furnish the documents relied upon would result in violation of principles of natural justice, thereby warranting interference under Article 226 of the Constitution of India, mere existence of a statutory Appeal would not constitute an embargo for entertaining a Writ Petition in such circumstance.

7. The grievance of the appellant that failure to furnish the documents relied upon would result in violation of natural justice is well-founded. It has been consistently held that whenever an assessment is made on the basis of certain documents and if a request is made by the assessee, it is incumbent on the Assessing Officer to furnish such copies to enable the assessee to respond to the allegations.

8.In the circumstances, we are inclined to set aside the order of assessment dated 28.08.2014 and direct the respondent to communicate to the appellant the list of documents available and furnish the copies of such documents which form the basis / relied upon in the order of assessment, at the cost of the appellant.

9.The Writ appeal is disposed of with the following directions viz.,

a)The document relied upon and available with the respondent shall be furnished within a period of 4 weeks from the date of this order at the cost of the appellant.

b)Thereafter, the appellant shall be permitted to file its objections and an opportunity of personal hearing shall be granted within a period of 4 weeks.

c) Thereafter, the respondent shall pass the order within a period of 4 weeks from thereon.

The writ appeal is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur.

W.A.No.2573 of 2021
in
W.P.No.2935 of 2016
and
C.M.P.No.16785 of 2021

KSM(CO)
PM/30/11/2021