BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.25199, 25200 & 25202 of 2019
and
WMP(MD)Nos.21779, 21782 & 21784 of 2019

M/s.Shri Lakshmi Dhall Mill,
Rep.by its Partner S.Somasundaram ... Petitioner in all cases

Vs.

The Assistant Commissioner (ST),
Theni I Assessment Circle,
Theni. ... Respondent in all cases

Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33675121129/2011-12, 2012-13, 201-14 dated 31.10.2019 issued by the respondent and quash the same as illegal and arbitrary and direct the respondent to pass assessment order after verifying the records of the petitioner in accordance with law by considering the petition dated 12.11.2019 filed by the petitioner under section 84 of the TNVAT Act including the opportunity of being heard.

For Petitioner in all cases : Mr.S.Karunakar

For Respondent in all cases : Mr.G.Arjunan, Government Advocate

COMMON ORDER

Even before commencing the arguments, the learned counsel appearing for the petitioner submitted that in respect of the three writ petitions, the petitioner would remit a sum of Rs.5.00 lacs to the respondent on or before 31.03.2021. This remittance will be made without prejudice to the petitioner's contention. The petitioner will abide by the orders that will be passed by the respondent if this Court remands the matter.

2.Heard the learned counsel on either side.

3.The assessing officer appeared through video conference and assisted the court. Shri Lakshmi Dhall Mill is the petitioner in all these three writ petitions. The assessment orders relate to the assessment years 2011-12, 2012-13 & 2013-14. The writ petitioner's assessment in respect of these years was concluded on deemed assessment basis. However, there was a surprise inspection at the petitioner's place of business premises and that led to the issuance of pre-revision notice dated 31.03.2015. The petitioner initially came before this Court and the writ petitions were filed questioning the very issuance of the notices. The writ petitions were dismissed and the petitioner was directed to avail the remedy before the respondent by submitting their replies. Thereafter, replies were submitted and the petitioner was also given personal hearing. The impugned orders were passed on 31.10.2019. Challenging the same, these writ petitions have been filed.

4.The respondents have filed a detailed common counter affidavit. The learned Government Advocate appearing for the respondent reiterated all the contents set out therein.

5.The core contention of the petitioner's counsel is that the petitioners are primarily dealing in pulses, grams and wheat. The petitioners are engaged in imports, consignment sales, local purchase as well as inter-state purchase. The petitioner would be liable to pay purchase tax if they fall within Section 12 of the TNVAT Act, 2006. Even though the petitioners are having accounts in respect of all the transactions as mentioned above, the respondent in the impugned order has invoked a formulae for levying the purchase tax on the ground that separate accounts are absent. If the petitioner had been called upon to segregate the transactions and make available the details regarding local purchase, then, the respondent could have very easily and precisely computed the petitioner's liability. But he had not done so. Instead, the entire turn over has been taken into account and invoking some arbitrary formulae, the purchase tax has been levied. In the impugned order, the proportionate local purchase liable for tax value has been estimated by taking into account the overall turn over.

6.In my view, there was absolutely no necessity or need for making any guess work. If the records are not available, then, the authority will have to take recourse to such best judgment assessment exercise. Instead of calling upon the petitioner to make available the records, the respondent had fallen back on guess work. On this sole ground, the impugned orders are quashed and the matter is remitted to the file of the respondent to pass orders afresh in accordance with law. This writ petition is allowed. This order will come into effect only if the petitioner adheres to the undertaking given earlier. If the petitioner does not remit the sum of Rs.5.00 lacs to the respondent on or before 31.03.2021, this order will be of no consequence and the writ petition would stand dismissed in such an event. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner (ST),
Theni I Assessment Circle,
Theni.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-11466[F] dated 16/03/2021)

+1 CC to M/s.SPL GP (SR-11612[F] dated 16/03/2021)

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TP(CO)
TR(30.04.2021) 3P 4C