IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.2565, 2573, 2576, 2580, 2581 and 2586 of 2022
and W.M.P.Nos.2697, 2705, 2711 and 2719 of 2022, 2688/2022

M/s.T.N.C.Santhosh
Represented by its Proprietrix
Mrs.C.Navamani aged about 61 years
W/o Mr.N.Chandrasekaran
No.7, Kummalamman Koil Street
3rd Lane, Tondiarpet
Chennai - 600 081. …. Petitioner in all WPs

-Vs-

1.Commissioner of Commercial Taxes
Chennai 600 005.

2.The Additional Commissioner of
Commercial Taxes, Chennai 600 005.

3.The Assistant Commissioner (ST)
Tondiarpet Assessment Circle
Chennai - 600 081.

4.The Joint Commissioner(ST)
Chennai (North) Division
Chennai - 600 006. …. Respondents in all the Wps

Prayer in W.P.No.2565/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent in TIN 33761200679 / 2008-09 dated on 20.12.21 with respect to the Assessment Year 2008-09 and quash the same.

Prayer in W.P.No.2573/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent in TIN 33761200679 / 2009-10 dated on 20.12.21 with respect to the Assessment Year 2009-10 and quash the same.

Prayer in W.P.No.2576/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Calling for the records of the 3rd respondent in TIN 33761200679 / 2010-11 dated on 20.12.21 with respect to the Assessment Year 2010-11 and quash the same.

Prayer in W.P.No.2580/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Calling for the records of the 3rd respondent in TIN 33761200679 / 2011-12 dated on 20.12.21 with respect to the Assessment Year 2011-12 and quash the same.

Prayer in W.P.No.2581/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent in TIN 33761200679 / 2012-13 dated on 20.12.21 with respect to the Assessment Year 2012-13 and quash the same.

Prayer in W.P.No.2586/2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 3rd respondent in TIN 33761200679 / 2013-14 Date 20/12/2021with respect to the Assessment Year 2013-14 and quash the same.

For Petitioner in all Wps: Ms.G.Dhana Madhri

For Respondents in all WPs: Mr.N.R.R.Arun Natarajan
Special Government Pleader

O R D E R

These writ petitions are related to the assessment year 2008-09 to 2013-2014. The petitioner was a dealer involved in the business of pulses and other related items. Insofar as the aforesaid assessment years are concerned, the Revenue has levied purchase tax against the petitioner under Section 12(1)(c) of the TNVAT Act, 2006.

2. Aggrieved, the petitioner has filed a revision before the Joint Commissioner (Sales Tax), Chennai (North) in R.P.No.10 to 16 of 2021. The Joint Commissioner ie., the revisional authority, by an order dated 23.08.2021 had remanded the matter to the assessing authority with a direction that the petitioner shall file supporting documents to the assessing officer to prove

that they have not effected any purchase from dealers whose total turn over is more than Rs.300 to Rs.500 Crores, as the case may be. The said exercise shall be undertaken within four weeks time from the date of the order and thereby the assessing authority was directed to pass orders.

3. It is also stated in the said order that, the assessing authority shall also pass orders on merits and in accordance with law following the principles of natural justice and as per the ratio laid down by this Court in the judgment of M/s.Sunrise Foods Private Limited (2020 [80] GSTR 156 (Mad) especially in Para 84.

4. In response to the said remand order passed by the revisional authority, the assessing authority had issued a notice giving four weeks time to produce the supporting documents to establish that the petitioner had purchased from selling dealers who have not crossed their total turn over more than Rs.300 to Rs.500 Crores, as the case may be.

5. In this context, the notice, according to the Revenue, was not responded by the petitioner. However, in order to give an opportunity of personal hearing to meet the principles of natural justice, the personal hearing has been posted on 15.12.2021 at 3.00 P.M. However, the petitioner on 15.12.2021 made a request to grant 30 days time to produce the materials to show that their selling dealers have not crossed Rs.300 to Rs.500 Crores turn over. Accordingly, as per the request of the petitioner, the personal hearing was adjourned and posted on 19.01.2022 at 3.00 P.M.

6. Though such an extended time was given for personal hearing upto 19.01.2022, by a proceedings of the respondent dated 15.12.2021, subsequently by another proceedings dated 20.12.2021, the assessing authority had issued a notice to the petitioner stating that, though the personal hearing was deferred as requested by the petitioner to 19.01.2022, in the meanwhile assessing authority has come to the notice of the Division Bench judgment of this Court passed in W.A.No.2549, 2551 of 2021 etc., batch of writ appeals against the order passed in M/s.Sunrise Foods Private Limtied in the Writ Court, where the entire findings, especially the findings given in Para 84 of M/s.Sunrise Foods Private Limited's case, was erased.

7. In view of the said order passed by the Division Bench, according to the assessing authority, the only reason for which the remand order originally passed by the revisional

authority is no more available and therefore that reason had become infructuous. Hence, the assessing authority decided to confirm the proposal already made by restoring the earlier levy of purchase tax to the extent of Rs.27,10,355/- with 150% penalty to the extent of Rs.40,65,533/- and in this regard, 15 days time was given to the petitioner to give their reply with regard to the said proposal. Aggrieved by this notice dated 20.12.2021, the petitioner has moved the present writ petitions.

8. Heard Ms.Dhana Madhri, learned counsel for the petitioner who would submit that, insofar as the ground under which the revisional authority originally remanded the matter to the assessing authority is not merely on the basis of the judgment of M/s.Sunrise Foods Private Limited case, but on the basis of the right of the dealer to seek exemption if the dealer is able to establish that its turn over for the relevant years is less than Rs.300 Crores.

9. In this context, the learned counsel for the petitioner would rely upon Section 15 of the Tamil Nadu Value Added Tax Act, 2006 (In short 'TNVAT Act') in respect of Entry 68 of Schedule IV of the said Act. Therefore, she would submit that, if at all the assessing authority wants to decide the issue let him independently decide the issue after affording an opportunity to the petitioner, as already been given by way of extending the time upto 19.01.2022, by giving further extension, enabling the petitioner to produce the supporting documents to establish the fact that the turn over was less than Rs.300 Crores and thereafter decide the issue on merits. Therefore, only for the said limited purpose, even though the impugned communication is only a notice, the petitioner has chosen to file these writ petitions. Hence, learned counsel for the petitioner seeks the indulgence of this Court.

10. On the other hand, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondents would submit that, no doubt the exemption flows from Section 15 in respect of Entry 68 of Schedule IV of the TNVAT Act, where, those items which have been dealt with by the petitioner/dealer are exempted from the purview of the tax, provided, if the annual turn over of the dealer concerned must be less than Rs.300 Crores and the proof to prove that it is below Rs.300 Crores lies on the shoulders of the dealer/petitioner.

11. Learned Special Government Pleader would contend that, it cannot be correct to state that this legal position has flown only from the judgment in M/s.Sunrise Foods Private

Limited's case and therefore what has been stated in M/s.Sunrise Foods Private Limited's case is only a reiteration of the legal position and therefore independently based on the said legal position, the assessing authority would consider the issue and pass orders, provided the petitioner cooperates with the assessing authority by producing the necessary documents and inputs in respect of their case that, their turn over is less than Rs.300 Crores, within a time limit, where a date also for personal hearing and production of documents can be fixed by this Court, he contended.

12. I have heard the learned counsel on either side and have perused the documents placed on record.

13. As has been rightly pointed out by the learned counsel for the petitioner with regard to the legal position, which is not in much dispute, as the learned Special Government Pleader also fairly submitted about the legal position, wherein under Section 15 of the TNVAT Act, there has been a total exemption provided for certain items, where Schedule IV states about various items wherein Entry 68 speaks about pulses and other items which have been dealt with by the petitioner/dealer herein. But the only catch is that the total turn over shall not be more than Rs.300 Crores.

14. Therefore, the ground on which the revisional authority remanded the matter to the assessing authority to reconsider the issue by giving an opportunity to the petitioner to produce the documents to substantiate their claim that their turn over is less than Rs.300 Crores, is based on the legal position and not based on the judgment in M/s.Sunrise Foods Private Limited's case and therefore the findings or reasons given in the impugned notice itself by the assessing authority that in view of the Division Bench judgment against M/s.Sunrise Foods Private Limited, the only reason under which the revisional authority has remanded the matter to the assessing authority is no more available and therefore it has become infructuous, is against the legal position and therefore, based on such findings indicated in the impugned notice, the assessing authority cannot proceed to finalize the issue.

15. In that view of the matter this Court feels that, the matters can be remanded back to the assessing authority with the following orders.

- That the assessing authority shall provide four weeks time from the date of receipt of a copy of this order to the petitioner/assessee by fixing a date within the said four weeks by way of personal hearing to provide the documents and other inputs in support of the claim of the petitioner that their turn over is not more than Rs.300 Crores and on that date to be fixed in this regard, the petitioner shall appear and produce the documents.

- On receipt of the same, the assessing authority shall evaluate those documents independently unmindful of the decision referred to above and especially in the legal position as contemplated under Section 15 of the TNVAT Act in respect of Entry 68 of Schedule IV and accordingly pass the orders on merits within a period of four weeks thereafter.

16. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

KST

To

1.Commissioner of Commercial Taxes,
Chennai 600 005.

2.The Additional Commissioner of Commercial Taxes,
Chennai 600 005.

3.The Assistant Commissioner (ST),
Tondiarpet Assessment Circle
Chennai – 600 081.

4.The Joint Commissioner(ST),
Chennai (North) Division
Chennai - 600 006.

+6ccs to M/s.G.Dhana Madhri, Advocate SR.No.10690 to 10695
+1cc to Special Government Pleader(Taxes), SR.No.10865

W.P.Nos.2565, 2573, 2576,
2580, 2581 and 2586 of 2022

SSD(CO)
CB(08/03/2022)