IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No. 28826 of 2007 and
M.P.No.1 of 2007

Tvl. Penna Cements Industries Limited,
Represented by its Director,
Mr.Sreedhar Reddy,
No.6 & 7, Ashoka Saw Mill and Wood
Industries Complex,
Denkanikottai Road,
Hosur. ... Petitioner

-vs-

1. The Commercial Tax Officer,
   Hosur Assessment Circle,
   Hosur.

2. The Appellate Assistant Commissioner
   (CT) C.T.Buildings, Salem.

3. The Sales Tax Appellate Tribunal
   (AB), C.T.Buildings, Dr.Balasundaram
   Road, Coimbatore-18. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records on the fie of the 3rd Respondent in CTSA.No.534/2001 dated 28.12.2006 and quash the same as being unjust and arbitrary and not enforceable by law.

For Petitioner : Mr.A.Suresh

For Respondents : Mr.Prashanth Kiran
Government Advocate (T)

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ORDER

S.VAIDYANATHAN.,J
and
C.SARAVANAN.,J

The Present Writ Petition has been filed challenging the order dated 28.12.2006 passed by the 3rd Respondent, in allowing the C.T.S.A.No.534 of 2001 filed by the Deputy Commissioner (CT), Salem.

2.The dispute in this case pertains to Assessment Year 1996-1997. The Petitioner had procured cement bags from its factory in Andhar Pradesh at cost of Rs.150.49/- per bag and the same was later sold at Rs.128.61/- in the State of Tamil Nadu. In these circumstances, the

Department on scrutiny of documents issued notice to revise the self Assessment. The allegation in the notice issued to the Petitioner are as under:

> "*2. On verification of check-post records of other State Form X No.F 8072788 and F 8085515 dated 21.01.97 reveals per bag rate is Rs.514.00. The dealer has effected the sales per bag Rs.128.61. The dealer has not properly explained the price variation of per bag of cement.*
>
> *In view of the above said position, it is proposed to reject the returns and the accounts as incorrect and incomplete and to determine the total and taxable turnover relating to the business for the year 1996-97 to the best of my judgment as detailed below:*

Ist Sales of Cement as per accounts	..	*Rs.77,99,464.00*
ADD Sales Suppressions of per bag rates price difference	..	*Rs.13,07,451.00*
Total and taxable turnover proposed and taxable 16%	..	*Rs.91,06,915.00*

3. The 1st Respondent after considering the objections of the petitioner confirmed the demand proposed in the notice the Assessment Order of the 1st Respondent dated 31.03.1999. Aggrieved by the same, the Petitioner preferred an Appeal before the 2nd Respondent in A.P.No.401 of 1999. A.P.No.401 of 1999 was allowed by the 2nd

Respondent Appellate Assistant Commissioner with the following observations:-

> *".... The Price Variation have not been taken into account and considered as suppression because the goods were transferred from the Head Office to their branch only. That is the Principal received thro' from their factory At A.P. State and determined the price at Tamil Nadu according to the availability of supply and prevailing in the market. So without any substantial evidence, the suppression arrived by way of estimation could not be sustained under any circumstances."*

4. Aggrieved by the same, the Deputy Commissioner, Salem preferred C.T.S.A.No.534 of 2001 before the third respondent Tamil Nadu Sales Tax Appellate Tribunal (for brevity 'the Tribunal'). The third respondent Appellate Tribunal has reversed the order of the 2nd Respondent vide impugned order dated 30.08.2000. The Petitioner has thus filed this Writ Petition seeking to reverse the impugned order of the Tribunal.

5. We have considered the arguments advanced by the learned counsel for the Petitioner as well as learned Government Advocate appearing for the Respondent..

6. The Petitioner has not given clear explanation as to why there was a variation in the value adopted at Rs.150.18/- per bag at the time of clearance of consignment of cement bags from its factory in Andhra Pradesh and value adopted at the time of sale at its deposit of Rs.128.61/- per bag. The reply given by the Petitioner is also not clear as to the basis of price reduction. The third Respondent has also not discussed about any evidence to justify that there was suppression in the value and receipt of sale consideration separately. These aspects ought have been discussed.

7. Considering the fact that both the Petitioner and the Department have not discharged their burden of proof to justify either of their stand, we are inclined to quash the impugned order of the Tribunal and remit the matter back to the first respondent for fresh consideration.

8. Accordingly, the order passed by th third respondent in C.T.S.A.No.534 of 2001 is quashed and the matter is remitted back to the first respondent. The first respondent is directed to pass a fresh order, within a period of three months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner. The petitioner is at liberty to give a fresh representation explaining the reasons for variance in the value of Rs.150.18/- to Rs.128.61/- .

9. This writ petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.,] **[C.S.N., J]**

08.09.2022

Index: Yes / No
Internet: Yes / No
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To

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2. The Appellate Assistant Commissioner
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   (AB), C.T.Buildings, Dr.Balasundaram
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S.VAIDYANATHAN,J
and
C.SARAVANAN,J.

arr/kkd

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