BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.19704 of 2021
and
W.M.P(MD).No.16384 of 2021

Tvl.Vadivel Pyrotechs Private Limited,
Represented by its Director,
Arumugaswamy,
No.8/217G, Annuppankulam,
Sivakasi. ... Petitioner

Vs.

The Assistant Commissioner (ST)-1,
The Office of the Assistant Commissioner (ST)-1,
Commercial Taxes Building,
N.G.O.Colony, Satchiyapuram,
Sivakasi-626123. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records in CST No. 835459/2012-2013, dated 23.07.2021 on the file of the Respondent in TIN No.33695962884 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.M.Siddharthan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order, dated 23.07.2021 for the assessment year 2012-2013.

2. It is submitted by the learned counsel for the Petitioner that the Petitioner had earlier challenged the validity of the pre-assessment notice in W.P(MD)Nos.1159 to 1162 of 2018, dated 29.01.2018, wherein, this Court was pleased to issue the following order:

> *"2.The learned counsel appearing for the writ petitioner placed reliance of this Court reported in (2010) 255 ELT 161 (Rajam Industries (P) Ltd Vs. Addl. D.G., D.C.E.I., Chennai). The legal issues arising in the present cases and in the said decision are one and the same. This Court chose to set aside the revised assessment orders with liberty to the authority to proceed afresh either after the adjudication process by the Excise Department gets completed if any fresh material is found. This Court is however of the view instead of quashing the impugned pre-assessment notices, the same can be directed to be kept in abeyance, till the adjudication by the Central Excise Department gets completed."*

3. Consequent to that, the Petitioner had requested the Respondent to await for the outcome of the proceedings made by the Central Excise Department. The Proceedings made by the Central Excise Department culminated in an order, dated 28.03.2018. On the basis of the above order under Central Excise Act, the impugned order under Central Sales Tax Act came to be passed.

4. It is submitted by the learned counsel for the Petitioner that subsequently orders under Central Excise Act were challenged in appeal before CESTAT. The CESTAT has reversed the order of the adjudicating authority and set aside the impugned order. It is submitted that in the light of the subsequent development, the impugned order cannot be sustained.

5. To the contrary, the learned counsel for the Respondents submits that the assessment order has been made in terms of the order passed by the Central Excise Department and therefore, one cannot find fault with the orders of the assessment and merely because subsequent to the orders of the assessment, the orders made by the Central Excise Department stands reversed by the CESTAT does not make an assessment order bad.

6. Heard both sides and perused the materials on record.

7. This Court finds that entire proceedings had been made on the basis of proceedings made by the Central Excise Department. This Court may take judicial notice of subsequent events, which have a bearing on the impugned order, when it is brought to its notice with regard to the matters in controversy between the parties and this is primarily done by the Court in order to shorten

litigation between the parties.[1] Since the tribunal has set aside the order, the very basis of the impugned proceeding no longer survives. In view of the above, this Court is inclined to set aside the impugned order and remit the matter back to the Assessing Authority for redoing the assessment taking into account the subsequent order of the CESTAT, which has material bearing on the order of the assessment.

8. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index : Yes / No
Internet : Yes/ No
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To

The Assistant Commissioner (ST)-1,
The Office of the Assistant Commissioner (ST)-1,
Commercial Taxes Building,
N.G.O.Colony, Satchiyapuram,
Sivakasi-626123.

1 Sova Rani Devi v.Parul Rani Chowdhury, 1976 SCC online Cal 206

MOHAMMED SHAFFIQ, J.

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W.P(MD).No.19704 of 2021

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