IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.1695, 1696, 1697 &1699 of 2023
and
C.M.P.Nos.15011, 15005, 15006, 15002, 15003, 14997
& 14998 of 2023

Sri Maharaja Industries represented
by its Proprietor, K.Paramasivam,
No.119, Bhavani Main Road,
Erode 638 004. .. Appellant
in all the appeals

Vs.

The Assistant Commissioner (ST) (FAC)
Periya Agraharam Circle, Erode. .. Respondent
in all the appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 24.05.2023 passed in W.P.Nos.16082, 16080, 16077 & 16075 of 2023.

For Appellant
in all cases : Mr.R.Senniappan

For Respondent
in all cases : Mr.Haja Nazirudeen
Additional Advocate General
assisted by
Mr.M.Venkateswaran
Special Government Pleader

COMMON JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

These writ appeals have been filed challenging the common order passed by the learned Judge, disposing of the writ petitions observing that sufficient opportunity has already been given to the appellant and hence, the request of the dealer does not deserve consideration.

2.The facts of the case are that the appellant is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956 and an assessee on the files of the respondent herein. The appellant has given representation dated 28.11.2022 to the notice for revision issued by the respondent, relating to the assessment years from 2008-2009 to 2011-2012, proposing to revise the orders of assessment under the CST Act on the ground that the appellant has to file Form-F Declaration for the claim of exemption in respect of the turnover relating to branch transfer. In the absence of the Declaration, it was proposed to assess the turnover under the CST Act. The appellant submitted representations to the authorities to pass orders as per the principles laid down by the Hon'ble Supreme Court, enclosing the proof of evidence of bank transfer, such as, Form JJ and copies of returns and transfer of goods to the branch. With these background, the appellant filed writ petitions separately for the relevant assessment years, before the Writ Court.

3.The learned Judge, after going through the averments, observed that the only grievance of the appellant is that principle of natural justice was not followed before passing the orders impugned therein and that, no opportunity of personal hearing was granted. Further observing that since notice has been given to the appellant and the appellant has submitted its reply and thereafter, enquiry was also conducted, the request of the dealer does not deserve consideration, by the order impugned herein, the learned Judge disposed of the writ petitions holding that sufficient opportunity has been given. Aggrieved by the same, the present writ appeals have been filed by the appellant / assessee.

4.According to the learned counsel for the appellant, without any discussion or reference with respect to the averments / submissions made by the appellant in support of its claim, the learned Judge simply rejected the prayer made in the writ petitions on the ground of alternative remedy, by the order impugned herein, which is arbitrary, illegal and against the law. The learned counsel also drew the attention of this court to the findings of the assessing officer, which reads as under:

> *"The request of the dealers has been examined in detail with the supporting documents filed though the dealers have submitted copy of request letter made to the Commercial Tax Officer, Circle – 2, Thirupathi. Copies of Form JJ delivery notes and VAT returns, they have not submitted the vital documents such as i) Lorry receipt copies for the movement of goods from Tamil Nadu to Tirupathi. ii) Copies of acknowledgement on declarations signed by their branch office for receiving the goods in Thirupathi. iii) Assessment order passed by the C.T. Authorities in Tirupathi for the year 2008-2009 for the completion of assessment and the payment of taxes."*

It is submitted that the appellant was unable to produce certain documents at the time of assessment.

5.Ultimately, the learned counsel for the appellant submitted that an opportunity be given to the appellant to go before the revisional / appellate authority and on such filing, the same may be directed to be considered by the respondent on merits, for which stand the learned Special Government Pleader appearing for the respondent has no objection for the same.

6.In view of the submissions made on either side and also taking note of the findings of the assessing authority (supra), the appellant is permitted to file revision / appeal within a period of four weeks from the date of receipt of a copy of this judgment. On such revision / appeal being filed before the concerned authority, the same shall be considered on merits, without taking note of the point of limitation, and appropriate orders be passed, on merits and in accordance with law, as expeditiously as possible. The appellant shall file all the documents and evidence before the authority concerned, for consideration.

7.All these writ appeals stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
28.07.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

The Assistant Commissioner (ST) (FAC)
Periya Agraharam Circle, Erode.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

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