IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos. 16081 & 16082 of 2008

M/s.P.N.K.Trades Private Limited,
Rep. by M.Ranganathan,
Managing Director,
1, Mada Chruch Street, Royapuram,
Chennai – 13. .. Petitioner in both WPs

vs

1.The Sales Tax Appellate Tribunal,
(Additional Bench), City Civil Court Buildings,
Chennai – 104.

2.The Commercial Tax Officer,
Vadapalani II Assessment Circle,
621, Anna Salai, Chennai – 6. .. Respondents in both WPs

Prayer in W.P.No.16081 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the files of the 1st respondent in T.A.No.243/02 dated 25.1.08 relating to the year 1996 – 97 and quash the same as being invalid and illegal.

Prayer in W.P.No.16082 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the files of the 1st respondent in T.A.No.498/02 dated

25.1.08 relating to the year 1997 – 98 and quash the same as being invalid and illegal.

For Petitioner	:	Mr.V.Srikanth (in both WPs)
For Respondents	:	Mr.TNC Kaushik, AGP for R2 R1 – Tribunal (in both WPs)

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The petitioner challenges an order of the Sales Tax Appellate Tribunal dated 25.01.2008 relating to the periods 1996 - 97 and 1997 – 98. The petitioner is a dealer under the Tamil Nadu General Sales Tax Act, 1959 (in short, 'Act') and had filed monthly returns.

2. The returns were taken up for assessment and by order of assessment dated 31.03.99, the assessing authority rejected the claim of second sales on the ground that no records were produced in support of such claim. Penalty was also levied.

3. The petitioner was unsuccessful in both First and Second appeals as admittedly the records in support of the claim of second sales was unavailable with the petitioner. The stand of the petitioner throughout the proceedings and reiterated before us, is that the books of accounts and other documents in relation to the two assessment years in question, had been seized by the customs authority in the course of a search conducted on 15.07.1997. According to petitioner, it

has been making strenuous efforts to obtain the return of the documents from the customs authorities but to no avail.

4. The petitioner had earlier filed W.P.No.18970 of 2006 before this Court wherein, both the customs as well as the sales tax authorities were arrayed as respondents. The prayer was for a mandamus directing the Commissioner of Customs to return all the records seized on 15.07.1997. The writ petition was disposed on 30.08.2006, this Court recording a letter produced to the effect that some time may be given to the customs authorities to produce the books. The Court, thus, permitted the petitioner to approach the Commissioner of Customs for return of documents.

5. The petitioner has placed on record two letters, one dated 18.12.2006 and second dated 07.01.2008 requesting the customs authorities to return the documents/books of accounts. There has been no response from the customs authorities. Hence the petitioner would submit that it has discharged its burden of proving the claim of exemption. We disagree. This Court is not inclined to intervene in the orders of the authorities made simply for the reason that the documents may be in the possession of the customs authorities.

6. A claim of second sales exemption has to be supported by relevant materials. The mere fact that the customs Department has conducted a search in the premises of the petitioner and has seized some documents cannot lead to the automatic inference that the documents in support of the claim of second sales were found in the

premises and seized.

7. If at all, the customs authorities had seized documents that would support the petitioner's claim of second sales, nothing had prevented the petitioner from pursuing available remedies to secure the records from the authorities, or at least, the mahazar / inventory of the seized documents in support of its contention. This has not been done.

8. For the aforesaid reasons, we decline to intervene qua the denial of second sales exemption and, confirm the order of the Tribunal in this regard. To make it clear, the rejection of second sales exemption and addition of 50% towards non-production of accounts and probable sales for the months of November, December, 1996 and January, 1997, is sustained. However, in the facts and circumstances of this case, we delete the penalty levied in full.

9. These writ petitions stand disposed in terms of this order. No costs.

[A.S.M., J] [G.A.M., J]
30.09.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

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DR. ANITA SUMANTH.,J.
and
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