IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

W.A.Nos.2549, 2551, 2552, 2553, 2557 & 2561 of 2021
and
C.M.P.Nos.16587, 16589, 16613, 16614, 16615, 16623, 16624, 16636, 16639, 16646 & 16647 of 2021

The Assistant Commissioner (CT)(FAC),
Park Road Assessment Circle,
Erode. ...Appellant in all appeals

Vs

M/s.Sunrise Foods Private Limited,
Represented by its Director Anoop Prakash Sharma,
89/75, Kandasamy Street,
A.P.A. Building,
Erode – 638 003. ...Respondent in all appeals

Appeals filed under Clause 15 of Letters Patent to set aside the common order dated 19.05.2020 passed in W.P.Nos.21982 to 21987 of 2016.

For Appellant
in all appeals : Mr.Haja Naziruddin
Additional Advocate General-I
Assisted by Mr.M.Venkateshwaran
Government Counsel

For Respondent
in all appeals : Mr.N.Prasad

COMMON JUDGMENT

T.S.Sivagnanam,J

These appeals have been filed by the Assistant Commissioner [CT][FAC], Park Road Assessment Circle, Erode [hereinafter referred to as "the revenue"] challenging the order passed in W.P.Nos.21982 to 21987 of 2016 dated 19.05.2020.

2.The respondent who is a dealer registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] had filed the writ petitions challenging the assessment s dated 29.01.2016 and a separate writ petition to direct the appellant to accept the revised return filed by the respondent along with the application dated 24.05.2016 as reiterated on

09.06.2016 and extend input tax credit under the provisions of Section 12(2) of the TNVAT Act. The primary and substantial ground which was raised in the writ petitions was that the Assessing Officer was guided by the report issued by the Enforcement Wing Officials which could not have been the basis for completing the assessment. Further, it was contended that the revision of assessment is without jurisdiction and there is non-compliance of section 22(3) of the TNVAT Act and rule 10(11) of the TNVAT Rules. That apart, the petitioner had also contended that there was non-application of mind to the facts which was relevant to be considered while completing the assessment and decisions of the Hon'ble Supreme Court and this Court were referred to and relied on. The ultimate direction issued in the order impugned may not be of serious consequences to the appellant/revenue as the order is an order of remand to the Assessing Officer to pass a speaking order within a time frame.

3.Mr.Haja Naziruddin, learned Additional Advocate General assisted by Mr.M.Venkateswaran, learned Government Counsel contended that though in paragraph 89 of the impugned order, the learned Single Bench had quashed the assessment orders and remanded the matters back to the Assessing Officer to pass a speaking order and a specific direction has been issued that such speaking order shall be passed in terms of the observations made in paragraphs 82 to 88 of the impugned order as far as levy of purchase tax under Section 12(1) of the TNVAT Act. Therefore, it is submitted that if the order passed in the writ petition was an order of simple remand, the revenue would not have aggrieved, however the demand is restricted and the Assessing Officer has been directed to proceed in a particular manner which is being challenged in the present appeals.

4.Mr.N.Prasad, learned counsel accepting notice for the respondent submitted that the preliminary submission before the learned Single Bench was on the ground that the revision of assessment could not have been made solely based upon the report of the Enforcement Wing Officials apart from the fact that there has been violation of principles of natural justice, etc. Further, it is submitted that the decision of the Madurai Bench of this Court in the case of ***P.Mariappan vs. The Deputy Commercial Tax Officer and another [W.A.Nos.558 to 564 of 2019 dated 08.11.2019]*** was referred to which was more or less a similar case except the produce dealt with by the respondent/writ petitioner is turmeric whereas the appellant in the said case was a dealer in chillies. It is submitted that in the said writ appeal, the legal issue which was raised is with regard to levy of purchase tax under Section 12 of the Act r/w. Section 15 of the Act which exempts tax on purchase of chillies if the total turnover of the buyer and seller is below Rs.300 Crores in a year as per Entry 18 of Part B of the 4^{th} Schedule. The Assessing Officer in those cases initiated proceedings for revision of assessment based upon certain circulars issued by the Commissioner of Commercial Taxes.

5.It was pointed out that in the said decision those circulars were issued not at the instance of the appellant/dealer but at the instance of Chamber of Commerce and Industries and the circular though may bind the revenue, it will not bind the Court. Further, it was pointed out that the dealers are entitled to submit their objections to the revision notice raising contentions on merits. However, if there is a circular, then the Assessing Officer would not be in a position to take an independent view. The Court referred to a decision in W.A.Nos.558 to 564 of 2019 where under it was observed that the dealer has to exhaust the remedy available under the provisions of the TNVAT Act and go through the adjudication process and not by-pass such a remedy. Ultimately the writ appeals were allowed and the order passed in the writ petitions were set aside and all the findings rendered in the writ petitions touching upon the merits and the legal issues were vacated and the dealer was directed to file additional objections and the Assessing Officer was directed to adjudicate the revision notices based on the contentions advanced by the dealer in their objections and the documents that may be produced at the time when personal hearing is offered to the dealer. Further, it was directed that the Assessing Officer shall take independent decision in the matter uninfluenced by any observation made in any circular issued at the instance of third parties and uninfluenced by the observations made in the order passed in the writ petitions which were vacated.

6.It is submitted that relying upon the said decision, the preliminary submission of the dealer was on similar lines so that the matter can go back to the Assessing Officer for a fresh decision. Thus the learned counsel would submit that if the matter is sent back to the Assessing Officer for a fresh consideration, then the respondent should be permitted to raise all issues both factual and legal and independent decision may be directed to be taken by the Assessing Officer.

7.After elaborately hearing the learned Additional Advocate General appearing for the appellant and Mr.N.Prasad, learned counsel appearing for the respondent, we are of the view that the prayer sought for in the writ petitions was to quash an order of assessment and the preliminary submission was on assumption of jurisdiction by the Assessing Officer to revise the assessment. Therefore, the lis before the Court was as to whether the revision of assessment was valid and whether there were any procedural impropriety committed by the Assessing Officer. In such circumstances, we are of the view that a finding regarding taxability of the product or otherwise may not be required to be given at that stage as the adjudicatory process is yet to be completed. We say so because the learned Writ Court has ultimately remanded the matter to the Assessing Officer to take a fresh decision. However the Court has circumscribed the limits of the decision and in what manner it is required to be taken. We are of the view that when the matter stands remanded to the authority, an open remand would be more appropriate, especially when the counter affidavit filed by the appellant was a very brief counter affidavit and the preliminary objection taken by the appellant was that the writ petitions are not maintainable and the respondent should have filed an appeal under Section 51 of the Act. Therefore, we are of the view that the matter should go back to the Assessing Officer for a fresh decision on merits and in accordance with law without being influenced by any of the observations in the order impugned before us or any findings that might have been recorded by the Enforcement Wing Officials. The Assessing Officer is reminded of his powers that he is an independent authority to take a decision in the matter based on the facts and law which is placed before him.

8.In the result, the writ appeals are partly allowed and the order and direction issued in the writ petitions in so far as it remands the matter to the Assessing Officer is sustained and all other observations and findings stand vacated and the appellant Assessing Officer is directed to take an independent decision uninfluenced by any of the observations contained in the impugned order or in the report or proceedings of the Enforcement Wing Officials, afford an opportunity of personal hearing to the respondent and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

(T.S.S.,J.) **(S.S.K,J.)**
06.10.2021

Index: Yes/No
Internet:Yes/No
Speaking Judgment/Non speaking Judgment
cse

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