IN THE HGIH COURT OF JUDICATURE AT MADRAS

DATED : 8.6.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13711 to 13717 of 2015
and MP.Nos.1 of 2015

M/s. A.V.Thomas Leather
And Allied Products Private Limited
Rep. by H.M.A.Hussain
authorized sigatory
No.22, Marshalls Road
Egmore, Chennai 600 008 ... Petitioner

Vs

The Assistant Commissioner (CT)
Egmore Assessment Circle
No.88, Mayor Ramanathan Road
Chetpet, Chennai 600 031. .. Respondent

Petitions filed under Article 226 of the Constitution of India praying this Court to issue a Writ of certiorarified mandamus to call for the records of the respondent in CST No.23756/2007-08 to 2013-2014 respectively and quash the proceedings dated 26.03.2015 as against the provisions of Section 10-A of the CST Act, contrary to the settled law laid down by the Full Bench of this Court in the case of State of Tamil Nadu reported in [2006 148 STC 256 (Mad) and in gross violation of principles of natural justice.

For petitioner : Mr.P.Rajkumar
For respondent : Mr.Manoharan Sundaram
Additional Government Pleader (Taxes)

COMMNON ORDER

Heard the learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petitions are taken up for final disposal at the admission stage.

2. These writ petitions are filed by M/s A.V.Thomas Leather and Allied Products Private Limited challenging the impugned orders passed by the respondent CST No.23756/2007-08 to 2013-2014 respectively dated 26.03.2015 as they are against the provisions of Section 10-A of the CST Act and also contrary to the settled law laid down by the Full Bench of this Court in the case of State of Tamil Nadu reported in [2006] 148 STC 256 (Mad).

3. The learned counsel for the petitioner would submit that the petitioner is the manufacturer of finished leather, leather products and shoes and in the course of business effects local and inter state purchases of raw materials, other allied products for the use in the manufacturing of finished products, tools and spares for use in repairing the factory machinery and packing materials for use in the packing of goods meant for export. Whileso, the respondent based on the audit report of the Enforcement Wing Officials, issued notices in CST Nos.3756/2007-08 to 2013-14 for the assessment years 2007-08 to 2013-14 alleging that the petitioner has purchased the packing materials and Tools and Spares from the interstate dealers during the years 2007-08 to 2013-2014 to the various amounts with a proposal to levy tax penalty at 150% at 4% on the total purchase turnover on the ground that since the above mentioned goods packing materials and Tool and Spares are not specified in the Certificate of Registration granted to the petitioner under CST Act and that the petitioner had falsely represented that such class of goods are covered by Certificate of Registration and thereby alleged that the petitioner had misused the C Form and availed the concessional rate of tax and hence, the petitioner has violated Section 8(3) of the CST Act attracting penalty under Section 10-A of the CST Act. Immediately on receipt of notices detailed objections dated 06.08.2014 and 06.03.2015 were filed pointing out to the respondent that there was no purchase by the name of goods as packing material by issue of C Form and the petitioner has actually purchased the items viz., Wooden strips wooden insert cap, grey board, rose board, PVC sheeting and stamping foils incoporated in the Certificate of Registration. It was also the claim of the petitioner in the replies that these materials in common terms are known as packing materials used in the packing of goods and these materials are cut and moulded to the shape of boxes and used for packing of goods meant for sale. Therefore, only for the sake of accounting purpose the purchase of said materials were accounted in the books of accounts under the head Packing Materials and under the head “Boxes”, but, the respondent has wrongly overruled the objections.

4. Adding further, it was further contended by the learned counsel for the petitioner that the issue raised in these writ petitions has been squarely covered by the Full Bench Judgment of this Court reported in [2006] 148 STC (Mad) [FB] in the case of State of Tamil Nadu vs. Nu-Tread Tyres, however the respondent, ignoring the stand taken by the petitioner that the issue has been covered and settled by the Full Bench Judgment of this Court cited supra, wrongly passed the impugned orders. Hence, according to the learned counsel, the petitioner has come forward with these writ petitions before this Court.

5. Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes) appearing for the respondent while heavily opposing the contention of the learned counsel for the petitioner for filing the writ petitions as against the impugned orders, since they are

appealable, submitted that the respondent has given a finding of fact touching various aspects and therefore, the question whether the aforementioned Judgment relied upon by the learned counsel for the petitioner is applicable or not has to be decided by the appellate authority and hence, the writ petitions are not legally maintainable.

6. I find force in the contention of the learned Additional Government Pleader (Taxes) appearing for the respondent. When the petitioner has got effective efficacious remedy, he cannot come to this Court. May be, he is right in saying that the judgments referred to by him have not been considered, but, that is not the ground to interfere with the impugned orders under Article 226 of the Constitution of India. Hence, the writ petitioner has to approach the appellate authority, which is the effective efficacious remedy available to him, he pleaded.

7. Therefore, the writ petitions fail and the same are dismissed and the petitioner is given two weeks' time from the date of receipt of a copy of this order to approach the appellate authority.

No costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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Note: Registry is directed to return the Original impugned orders to the learned Counsel for the petitoner.

To
1. The Assistant Commissioner (CT),
Egmore Assessment circle,
No.88, Mayor Ramanathan Road,
Chepet, Chennai - 600 031.

+1 cc to Mr.P.Rajkumar,Advocate, vide, sr.27502
+1 cc to M/s. Special Government Pleader, (Tax) vide, sr.27415.

copy to: The Section Officer,
Current Section,
High Court, (to terurn the original)
Madras.

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cnr(co), kra(31/07)