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In the High Court of Judicature at Madras

Dated : 16.9.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

T.C.No.76 of 2015

Jayabharath Textiles (P) Ltd.,
Rajapalayam ...Petitioner

Vs

1.The Additional Commissioner (SMR),
Office of the Special Commissioner &
Commercial Taxes, Chepauk, Chennai-6.

2.The Commercial Tax Officer II,
Rajapalayam. ...Respondents

TAX CASE under Section 37 of the General Sales Tax Act to revise the order of the Additional Commissioner(SMR),Chepauk, Chennai dated 21.10.2010 made in Ref.No.M2/ 64956/97 in SMR. No.II/439/98 against the Order of the Appellate Assistant Commissioner (CT), Virudhunagar, dated 06.05.1997 and made in Appeal No.444/96 against the order of the Commercial Tax Officer-II, Rajapalayam dated 30.05.1996 and made in Assessment NO.TNGST/911854/94-95 for the Assessment Year 1994-95.

For Petitioner : Mrs.Lakshmi Sriram

ORDER:

Order of the Court was made by V.RAMASUBRAMANIAN,J

The assessee has come up with the above case under Section 37 of the Tamil Nadu General Sales Tax Act raising the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Additional Commissioner (SMR) is right in law in holding that the performance of hank yarn obligation by the petitioner to discharge the statutory obligation of another mill would attract sales tax levy by treating the performance of the obligation as 'goods', when the issue was

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pending before the Hon'ble Supreme Court ?

ii. Whether, on the facts and in the circumstances of the case, the Division Bench of the Hon'ble High Court is right in law in relying on the writ petitions, which were dismissed by the Hon'ble Madras High Court, when the very writ petitions were challenged before the Hon'ble Supreme Court and the special leave petitions were admitted by the Hon'ble Supreme Court ?

iii. Whether the Additional Commissioner (SMR) was right in law in upholding the levy of surcharge and additional sales tax when the main issue of taxability of hank yarn receipts itself was pending before the Apex Court ? and

iv. Whether, on the facts and in the circumstances of the case, the impugned order of the first respondent passed after a period of 6 years from the date of hearing is valid in law ?"

2. The Additional Commissioner followed the decision of this Court in Tvl.Rajarathna Mills Limited Vs. C.T.O [2004 (3) MLJ 425] to the effect that the hank yarn obligation is liable to tax.

3. It appears that a special leave petition filed at the instance of the assessee is pending before the Supreme Court.

4. But, the pendency of the special leave petition does not wipe out the effect of the decision rendered by this Court. At the most, it can be said that no finality has been reached on the issue.

5. We have gone through the decision in Tvl.Rajarathna Mills Limited. We see no reason to take a different view. Therefore, following the decision in Tvl.Rajarathna Mills Limited, the questions of law are answered against the assessee.

6. The tax case is dismissed.

-Sd/-
Asst.Registrar(CSIII)
dt:08/10/2015

/true copy/

Sub Asst. Registrar

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To
1.The Additional Commissioner (SMR), Office of the Special Commissioner &
Commercial Taxes, Chepauk, Chennai-6.

2.The Additional Commissioner (SMR)
O/O.The Principal Secretary /Commissioner of Commercial Taxes, Chepauk, Chennai-5

3.The Appellate Assistant Commissioner(CT)
Virudhunagar

4.The Commercial Tax Officer II, Rajapalayam

5.The Secretary, Central Board of Revenue,
New Delhi,

+1 cc to Ms.Lakshmi Sriram, Advocate sr.50620

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