IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.10654 of 2004

M/s.Suguna Knitters,
88, New Ramakrishnapuram Main Road,
Tiruppur - 7. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Tiruppur (Kongaunagar) ... Respondent

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records of the respondent in TNGST 273148/94-95 and to quash the order, dated 31.01.1997, passed therein and further to direct the respondent to decide the issue relating to pre-export sales under Section 5 (3) of the CST Act, 1956, in the light of the law laid down by the Division Bench of this Court in W.A.No.458/1997, dated 03.10.2001.

For Petitioner : Mr. B.Raveendran
for Mr.Chandran Karuppiah

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader
for Tax cases.

O R D E R

This writ petition has been filed seeking a Writ of Certiorarified Mandamus to call for records of the respondent in TNGST 273148/94-95 and to quash the order, dated 31.01.1997, passed therein and further to direct the respondent to decide the issue relating to pre-export sales under Section 5 (3) of the CST Act, 1956, in the light of the law laid down by the Division Bench of this Court in W.A.No.458/1997, dated 03.10.2001.

2. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The case of the petitioner is that he is a manufacturer of hosiery garments. The petitioner claimed exemption on pre-export sales in respect of the assessment year 1994-95. But, it was denied by the respondent on the ground that the petitioner did not produce the original order placed by foreign customer on the Export House. However, it is claimed by the petitioner that exemption is provided under Section 5(3) of the CST Act, 1956, but, with a condition precedent that for grant of such exemption on the penultimate sale, the authorities would insist for production of the foreign order. Hence, the impugned order has been passed, denying exemption claimed by the petitioner under Section 5(3) of the CST Act, 1956, on the sole ground that the petitioner failed to file the purchase order of the foreign buyer placed on the actual exporter. Hence, the present writ petition.

4. According to the learned Counsel appearing for the petitioner, the issue involved in this Writ Petition is squarely covered by the judgment of the Division Bench of this Court in M/s.Tiruppur Exporters Association Vs. State of Tamil Nadu and others reported in 2003-04 9 TNCTJ [W.A.No.458 of 1997, dated 03.10.2001] and prayed for passing similar order in this writ petition.

5. The Division Bench of this Court in M/s.Tiruppur Exporters Association Vs. State of Tamil Nadu and others reported in 2003-04 9 TNCTJ [W.A.No.458 of 1997, dated 03.10.2001], held that if the dealer is not required to produce any evidence in proof of the export, it may lead to large scale evasion of tax. The mere filing of Form-H alone is not sufficient for claiming exemption of tax under Section 5(3) of the Central Sales Tax Act, 1956 and it is open to the assessing officer to conduct a detailed enquiry to find out whether particulars contained in Form-H are true or not and accordingly, dismissed the writ appeal.

6. Therefore, this writ petition is allowed and the impugned order passed by the respondent, dated 31.01.1997, is set aside and the respondent is directed to decide the issue relating to pre-export sales under Section 5(3) of the CST Act, 1956, in the light of the law laid down by the Division Bench of this Court in M/s.Tiruppur Exporters Association Vs. State of Tamil Nadu and others reported in 2003-04 9 TNCTJ [W.A.No.458 of 1997, dated 03.10.2001], viz, by informing the petitioner so as to

enable him to file an application to summon the documents from the Export House or from the assessing officer, who has jurisdiction over the Export House and obtain a copy of the foreign order or the agreement either from the Export House or from the assessing officer having jurisdiction over the Export House. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. If the petitioner is not able to produce necessary documents, it is open to the authority concerned to pass appropriate orders on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sd/rsb

To

The Deputy Commercial Tax Officer,
Tiruppur (Kongaunagar)

+1cc to Mr.Chandran Karuppiah, Advocate, S.R.No.67981
+1cc to the Government Pleader, S.R.No.67897

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JP(CO)
CA(25/02/2016)