IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 3.9.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.No.12957 of 2008
and
M.P.No.2 of 2008

M/s.Jayakumar Dyeing,
rep. by its Partner
Mrs.S.Kalpana Devi
No.15, Kamaraj Nagar,
III Street, P.N.Road,
Tirupur. ...Petitioner

vs.

1. Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore 641 018.

2. The Appellate Assistant Commissioner of Commercial Taxes, Pollachi.

3. The Commercial Tax Officer, Tirupur (North), Tirupur. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records on the file of the 1st respondent in his order in Coimbatore Tribunal State Appeal No.7/2002 dated 12.2.2008 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.A.N.R.Jayapratap, AGP(T)

ORDER

(Order of the court was made by V.RAMASUBRAMANIAN, J.)

The petitioner has come up with the above writ petition challenging an order of the Tamil Nadu Sales Tax Appellate Tribunal.

2. Heard Mrs.Hemalatha, learned counsel for the petitioner and Mr.A.N.R.Jayaprathap, learned Government Advocate (Taxes) for the State of Tamil Nadu.

3. The petitioner is engaged in the business of undertaking dyeing work. In relation to assessment year 1991-92, it was found that the petitioner had received dyeing charges to the tune of Rs.35,94,800/- using their own raw materials of dyes and chemicals purchased both locally and outside. Therefore, claiming that under section 3-B of the TNGST Act, 1959, there was a transfer of property, a proposal was made by an order of assessment dated 29.2.2000. The assessing officer imposed a tax of Rs.26,179/- by taking 50% of the total value. The assessing officer also imposed a surcharge of Rs.3929/- and a penalty of Rs.45,162/- under section 12(3).

4. The statutory appeal filed by the writ petitioner was allowed by the appellate Assistant Commissioner by an order dated 28.9.2001. However, the State took the matter on appeal to the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal allowed the appeal on the basis of the decision of the Supreme Court in RAINBOW COLOUR LAB v ((2000) 118 STC 9). Aggrieved by the said order, the assessee has come up with the above appeal.

5. The issue raised in this writ petition is covered by a decision of another Division Bench of this court in THE STATE OF TAMILNADU v. GEETHA DYEING dated 1.7.2011 in T.C.(R) No.842, etc of 2006. The said decision followed the decision in Rainbow Colour Lab. Therefore, the writ petition deserves to be dismissed.

6. However, in view of the fact that the issue raised is relating to the assessment year 1991-92 and the issue was travelling from back and forth to this court and the Supreme Court, the portion relating to penalty alone cannot stand. In view of the above, the

writ petition is partly allowed confirming the order of the assessing officer in all other aspects but, setting aside the portion of penalty. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Coimbatore 641 018.

2. The Appellate Assistant Commissioner
of Commercial Taxes,
Pollachi.

3. The Commercial Tax Officer,
Tirupur (North),
Tirupur.

1 CC to Mrs.R.Hemalatha, Advocate SR.No. 47420

1 CC to the Government Pleader, SR.No. 48146

W.P.No.12957 of 2008

MG (CO)
PSI (30.09.2015)