

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-01-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

W.A.Nos.1685 and 1760 of 2015

W.A.No.1685 of 2015

M/s.Tiruppur Surya Hitee Apparel Pvt Ltd.,
Rep. by its Managing Director K.Kuppusamy
5, M.P.Nagar Extn, Suriaprabha Garden,
Tiruppur-641 607. ... Appellant

Versus

The Commissioner of Central Excise,
Customs and Service Tax,
6/7, A.T.D.Street, Race Course,
Coimbatore-641 018. ... Respondent

Prayer: Appeals made under Clause 15 of the Letters Patent Act seeking to set aside the order of the learned Judge in W.P.No.12717 of 2015, dated 29.4.2015 and allow the Writ Petition.

W.P.No.12717 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to Call for the records pertaining to the impugned proceedings in C.No. V/ BFN/ 15/109 / 2013-ST, Adj, QIO.SI.NO.36/2014 - Commr dated 26.12.2014 and quash the same.

For Appellant : Mr.Joseph Prabakar

For Respondent : Mr.A.P.Srinivas

W.A.No.1760 of 2015

Sunrise Knitting Mills,
Rep. by its Partner R.Doraisamy
26, Bridgeway Colony Extn North,
Tiruppur-641 607. ... Appellant

Versus

The Commissioner of Central Excise,
Customs and Service Tax,
6/7, A.T.D.Street, Race Course,
Coimbatore-641 018.

... Respondent

Prayer: Appeals made under Clause 15 of the Letters Patent Act seeking to set aside the order of the learned Judge in W.P.No.12716 of 2015, dated 29.4.2015 and allow the Writ Petition.

W.P.No.12716 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to Call for the records pertaining to the impugned proceedings in C.No. IV/ BFN/ 15/108 / 2013-ST, Adj, OIO.SI.NO.35/2014 - Commr dated 26.12.2014 and quash the same.

For Appellant : Mr.Joseph Prabakar
for M/s.S.Raveekumar

For Respondent : Mr.A.P.Srinivas

COMMON JUDGMENT

(Judgment of the Court was made by M.Jaichandren,J)

The above Writ Appeals have been filed against the common order passed by the learned single Judge, dated 29.4.2015, made in W.P.Nos.12716 and 12717 of 2015.

2. The Writ Petition, in W.P.No.12716 of 2015, had been filed seeking to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the respondent, dated 26.12.2014, and quash the same.

3. The Writ Petition, in W.P.No.12717 of 2015, had been filed seeking to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the respondent, dated 26.12.2014, and quash the same.

4. The appellants are manufacturers and exporters in Hosieries and Textiles. They are exporting garments to various countries. In order to encourage such exports, the government of India had formed Special Economic Zones and the exporters have been granted exemption from Income Tax, Central Sales Tax and service tax. As such, no service tax is levied on exporters for the payments received by them from foreign buyers. While so, the respondent had issued notices, dated 24.10.2013, proposing to levy service tax on the receipt of export proceeds treating the transaction as an independent transaction, amenable to service tax, based on Reverse Charge Mechanism.

5. The appellants had submitted their detailed objections, dated 10.12.2014, stating that the proposal made by the respondent is without the authority of law. However, without considering the facts of the case, the respondent had levied service tax on the export proceeds, received from Amsco Finance, and also on the service charges relating to the export proceeds, vide proceedings, dated 26.12.2014. In such circumstances the appellants herein had filed the Writ Petitions before this court, in W.P.Nos.12716 and 12717 of 2015. The learned single Judge had passed a common order in the said writ petitions, dated 29.4.2015. Paragraph 3 of the said order reads as follows:

"Though various grounds have been raised assailing the impugned orders, this court is not inclined to entertain the writ petitions, as the impugned orders passed by the respondent are appealable under Section 85 of the Finance Act. Therefore, I am of the view that these writ petitions filed challenging the impugned orders, without availing an alternative remedy by way of filing an appeal before the Appellate Tribunal, cannot be maintained and the writ petitions are liable to be dismissed granting liberty to the petitioners to file an appeal within a period of two weeks from the date of receipt of a copy of this order. Accordingly, giving such liberty to the petitioners, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

Aggrieved by the common order passed by the learned single Judge, dated 29.4.2015, the Writ Appeals have been filed before this court.

6. Mr. Joseph Prabhakar, the learned counsel appearing on behalf of the appellants had submitted that the learned single Judge had failed to exercise the discretionary powers available, under Article 226 of the Constitution of India, in favour of the appellants. The learned Judge ought not to have dismissed the Writ Petitions, due to the availability of an alternative remedy provided under the relevant provisions of the Finance Act, in view of the decision of the Supreme Court, reported in H.P. V. Gujarat Ambuja Cement Ltd., (2005) 142 STC 1 (SC), and in view of the various decisions rendered by this court.

7. The learned counsel had further submitted that the learned Judge had failed to see that the respondent had no authority to levy service tax on the export proceeds, as it is nothing but the consideration received on the sale of goods to a

foreign buyer. The export had been made pursuant to the agreement entered into by the parties concerned, in accordance with the Central Sales Tax Act, 1956, which exempts export sale from tax, as per Section 8 of the Act.

8. The learned Judge had also failed to note that the impugned proceedings are in violation of Article 366(29A) of the Constitution of India, wherein the tax on the sale or purchase of goods is defined. The export by the appellants to a foreign buyer is nothing but a sale and the receipt of the money is the consideration for the goods involved in the transfer. Therefore, the respondent cannot divide the transaction of export and receipt of consideration as two separate incidents and treat the receipt process as an independent service and levy service tax on the same, under Section 66A of the Finance Act, contrary to the export policy of the Central government.

9. It has also been stated that the impugned orders had been passed without giving sufficient opportunity of hearing to the appellants. It had also been stated that the learned single Judge had failed to note that the impugned proceedings were contrary to Section 67 of the Finance Act, relating to the valuation of taxable services, for the charging of service tax. He had also failed to consider the fact that Section 66A cannot be invoked against the appellants, as the explanation to the said section states that a person carrying on business through a branch or agency, in any country, shall be treated as having a business establishment in that country. Further, the export activity of the appellants is covered under Section 65B(44)(a)(ii), which defines the term "service".

10. It had also been stated that the learned single Judge ought to have noted that the respondent had failed to consider Rule 4(a) of the Rules which deals with credit. If the appellants are treated as service receivers, they cannot be treated as service providers.

11. The learned single Judge ought to have noted that the appellants have been treated as service providers, as well as service receivers. In fact, the appellants are only exporters effecting sales. Therefore, Rules 3 and 9 cannot be invoked against them. Further, the levy of penalty and interest on the payments are also illegal in nature. He had further submitted that the invocation of Sections 68, 69, 70, 77 and 78 of the Act, by the respondent, is without the authority of law. The levy against the appellants would amount to double taxation. The learned single Judge had failed to consider the Notification No.29/2004-ST, dated 22.9.2004, as amended by notification No.19/2006, dated 25.4.2006, relating to invoice discounts. In such circumstances, the common order passed by the learned single Judge, dated 29.4.2015, dismissing the Writ Petitions

filed by the appellants, stating that the appellants ought to have availed the alternative remedies available to them under the relevant provisions of the Finance Act is not proper and it would be appropriate for this court to go into the merits of the matter and pass appropriate orders, quashing the illegal proceedings of the respondent.

12. We have heard the learned counsel appearing on behalf of the appellants and we have also perused the relevant records available before this court. Even though a number of grounds had been raised by the appellants in the present Writ Appeals, the main thrust of the contentions raised by the learned counsel appearing on behalf of the appellants is that the respondent does not have the authority or the jurisdiction to pass the impugned proceedings, dated 26.12.2014. However, it is noted that the respondent had passed the impugned proceedings considering all the issues, which had been raised, before in an elaborate manner. It is also noted that the appellants had not raised any specific ground relating to jurisdiction of the respondent at the initial stage of the proceedings. Even otherwise, when efficacious statutory remedies are available, it would not be open to the appellants to challenge the same, before this court, raising various grounds on the merits of the matter.

13. It is seen that the learned single Judge had dismissed the Writ Petitions filed by the appellants making it clear that it would be open to the appellants to avail the alternative remedies available to them, under the relevant provisions of the Finance Act. As such, we are of the considered view that the appellants have not shown sufficient cause or reason for this court to interfere in the common order passed by the learned single judge, dated 29.4.2015, made in W.P.Nos.12716 and 12717 of 2015. In such circumstances, we find it appropriate to dismiss the above Writ Appeals. Hence, the Writ Appeals stand dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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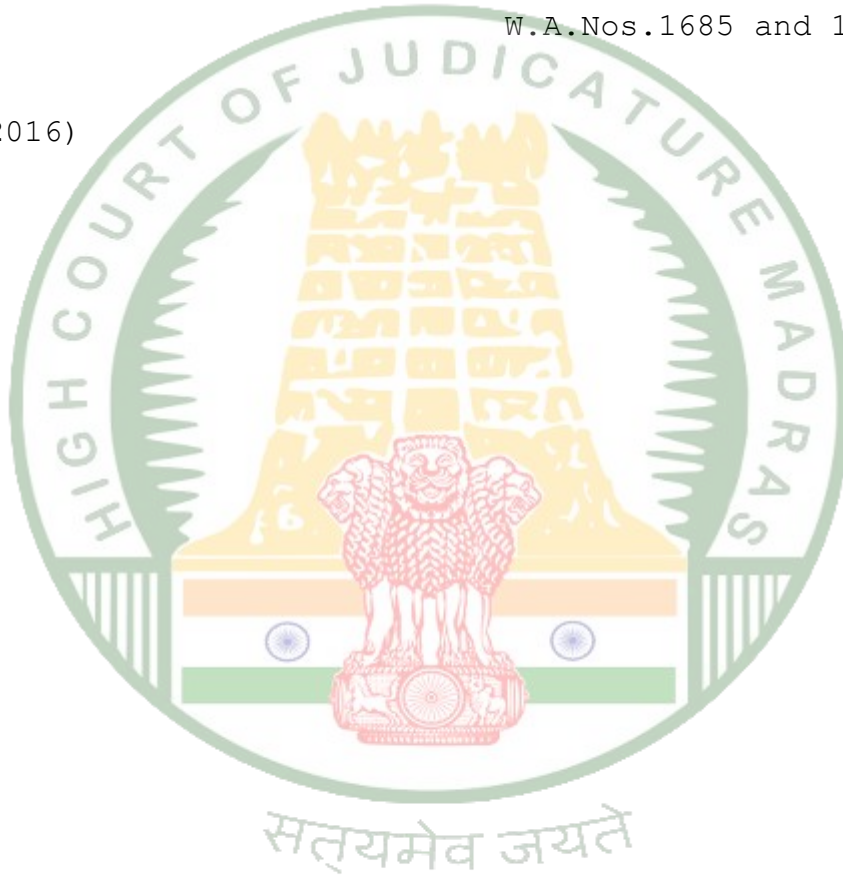
To

The Commissioner of Central Excise,
Customs and Service Tax, 6/7, A.T.D.Street,
Race Course, Coimbatore-641 018.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.2349
+2cc's to M/s.S.Raveekumar, Advocate, S.R.No.1974
+1cc to Mr.S.Kumar Sankar, Advocate, S.R.No.3742

W.A.Nos.1685 and 1760 of 2015

RSK(CO)
CA(04/02/2016)



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