IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4328 of 2012

Tvl.Jambai KNM Textiles (P) Ltd.,
Rep. By its Joint Managing Director,
J.K.M. Jayaprakash,
No.330, Annai Illam,
Salem Main Road, Kumarapalayam,
Namakkal District. ... Petitioner

Vs.

1.The Additional Commissioner (RP),
Office of the Commissioner of Commercial Taxes,
Ezhilagam Building,
Chepauk, Chennai - 5.

2.The Deputy Commissioner (CT),
Salem Division, Fort Main Road,
Salem.

3.The Deputy Commercial Tax Officer,
Sankari Assessment Circle,
Sankari. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records on the file of the first respondent in Ref.No.J2/RP/23/2006, dated 20.06.2011, received on 14.12.2011 and connected proceedings on the file of the third respondent in CST.428325/2001-02, dated 05.01.2005 and quash the same as being without jurisdiction and authority of law and contrary to amending Section 6-A of the CST Act, 1956 and Finance Act, 2010.

For Petitioner : Mr.N.Inbarajan

For Respondents: Mr.Manoharan Sundaram, AGP (T)

O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) for the respondents.

2. In this writ petition, the petitioner has challenged the order of assessment dated 20.06.2011 passed by the first respondent under the provisions of the CST Act, 1956, for the year 2001-2002, and the order dated 05.01.2005 passed by the third respondent in an application filed by the petitioner under Section 55 of the erstwhile TNGST Act, 1959.

3. The only issued involved in this writ petition is whether the respondent could have disallowed the consignment sale outside the State for want of Form F declaration. According to the petitioner, Form F declaration cannot be insisted as the assessment is for the year 2001-2002 and it was not mandatory to produce the Form F declaration at the relevant time, since the amendment to Section 6-A of the CST Act, 1956, came into effect only from 11.05.2002.

4. I am not inclined to accept the said submission for the simple reason that the assessment for the year 2001-2002 was made on 05.01.2005, which is after the date on which the amendment to Section 6-A of the CST Act came into force. After the amendment with effect from 11.05.2002, it has become mandatory for the dealer to file Form F with the movement of goods details and other details to claim exemption under Section 6-A of the CST Act. Therefore, no error can be attributed to the impugned order of assessment nor the order passed by the third respondent under Section 55 of the TNGST Act. However, the learned counsel for the petitioner submitted that the petitioner are in possession of Form F declaration and they may be granted an opportunity to file the same before the authority. It is settled legal position that there is no time limit provided under the statue for producing the declaration forms. Therefore, this Court is inclined to grant an opportunity to produce the Forms before the authority.

5. In the light of the above, while upholding the impugned orders for the present, liberty is granted to the petitioner to approach the assessing officer, namely, the third respondent and produce the Form F declaration. If the same is produced, the third respondent shall verify and if it is found to be acceptable, then the same shall be taken into consideration and the assessment for the relevant year, namely, 2001-2002, shall be redone in accordance with law, after affording an opportunity of personal hearing to the petitioner.

6. With the above directions, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Commissioner (RP),
Office of the Commissioner of Commercial Taxes,
Ezhilagam Building,
Chepauk, Chennai - 5.

2.The Deputy Commissioner (CT),
Salem Division, Fort Main Road,
Salem.

3.The Deputy Commercial Tax Officer,
Sankari Assessment Circle,
Sankari.

+1cc to the Special Government Pleader Sr.39175

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srg 28/07/2016