IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.12724 of 2007 and MP.No.1 of 2007

M/s.Lux Hosieries Industries Ltd.,
Tirupur ...Petitioner

Vs

1.The Commercial Tax Officer, North
Assessment Circle, Tirupur.

2.The Principal Commissioner and
Commissioner of Commercial Taxes,
Chennai-5. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent herein in CST No.335438/2004-05 and quash the order dated 26.2.2007 passed therein in the light of Section 12-C of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.S.Manohar Sundaram, AGP

ORDER

Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.S.Manohar Sundaram, learned Additional Government Pleader appearing for the respondents. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as the Act) and the erstwhile Tamil Nadu General Sales Tax Act, 1959, filed this writ petition challenging an assessment order dated 26.2.2007 for the assessment year 2004-05.

3. The petitioner is a dealer in hosiery garments, carrying on business at Tirupur. On the allegation that they have not filed returns under the Act for the assessment year 2004-05, a check was conducted in the business place of the petitioner, from which, the first respondent ascertained that the petitioner

had effected purchase of hosiery yarns, cloth, other consumables and accessories, both within the State and from outside the State, used in the manufacture of hosiery garments and effected stock transfer and consignment sales and to a small extent of pre-export sales.

4. The claim for exemption of pre-export sale was found to be in order, since it was covered by Form H and other evidence to satisfy the claim of exemption under Section 5(3) of the Act and accordingly, the same was allowed. Regarding the claim for exemption on consignment sale and stock transfer, on verification, the first respondent found that it was admissible only for Rs.37,62,15,764/-, since it was supported by Form F Declaration and other evidence for discharging the burden of proof under Section 6A of the Act. With regard to the balance of Rs.12,29,59,372/-, the first respondent pointed out that though it is supported by Form F Declarations, the claim was found not in order for the reason that the goods have been sold on the very next day and therefore, the first respondent proceeded to disbelieve the transaction as one between principal and agent, but as a transaction between a seller and a buyer. This has resulted in the impugned order of assessment.

5. The issue would be as to how Form F Declarations, when filed by a dealer, should be examined. Extraneous reasons cannot be imported to test the correctness of Form F Declarations. An enquiry to be made in terms of Section 6A(2) of the Act has been clearly explained in the decision of the Hon'ble Division Bench of this Court in the case of A.Dhandapani Vs. State of Tamil Nadu [reported in (1995) 96 STC 98] wherein the Hon'ble Division Bench, after elaborately analysing the statutory provisions, pointed out the nature of enquiry required to be made under Section 6A(2) of the Act in the following lines :

> "As a result of the aforesaid discussions, the following conclusions emerge :
>
> ......
>
> (ii) The enquiry required to be made under Section 6A(2) of the CST Act is confined to find out the truth or otherwise of the particulars contained in Form F and for this purpose, other evidence if any produced by the dealer other than the particulars contained in Form F is also to be considered. In the course of such enquiry, it is open to the Authority to call for any other information in order to verify the truth or otherwise of the particulars contained in the declaration filed in Form F. The 'any other information' may be that

which Rule 4(3A) of the CST (TN) Rules require a dealer to maintain except the one required under Rule 4(3A)(d) or any other evidence relating to the issue, in order to adjudicate whether the particulars mentioned in Form F are true. The copies of the bills issued by the agents to the purchasers as required by Rule 4(3A)(d) need not be produced nor it is open to the Assessing Authority to call for such bills."

6. This decision has been followed subsequently in several other decisions and to refer to a few of them, namely, the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. Coimbatore Pioneer Rolling Mills and another [reported in (2010) 30 VST 524]; and a decision of this Court in the case of Associated Cement Companies Ltd. Vs. Assistant Commissioner (CT) (FAC) [reported in (2009) 23 VST 488].

7. A perusal of the impugned order of assessment shows that the first respondent has not conducted the enquiry as required to be done and as explained by the Hon'ble Division Bench of this Court in the decision in (1995) 96 STC 98 (cited supra). Therefore, on this ground, the impugned order is liable to be set aside.

8. In the light of the above, the writ petition is allowed, the impugned order of assessment is set aside and the matter is remitted back to the first respondent for enquiry under Section 6A(2) of the Act after issue of notice and after affording an opportunity of personal hearing. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
North Assessment Circle,
Tirupur.

2.The Principal Commissioner &
Commissioner of Commercial Taxes,
Chennai-5.

+1cc to M/S.Hema Muralikrishnan, Advocate Sr.38576
+1cc to the Special Government Pleader Sr.38493

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and MP.No.1 of 2007

ks[co]
srg 25/07/2016