IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.35575 and 35576 of 2003

Tvl.National Surgical Dressings,
rep by Partner R.Balachandran,
36/A/14, Ramalingapuram Road,
Samusigapuram P.O 626 102
Virudhunagar District. .. Petitioner in both writ petitions

Vs.

1.The Appellate Assistant Commissioner (CT)
C.T. Buildings, Madurai Road,
Virudhunagar.

2.The Deputy Commercial Tax Officer-I,
Rajapalayam. .. Respondents in both writ petitions

Both these writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records on the file of the first respondent in K.Dis.1260 of 2003 and K.Dis.1262 of 2003, dated 20.8.2003, quash the same and further direct the first respondent to admit the appeal filed before him by the petitioner for assessment years 1996-97 (CST) and 1997-98 (CST) and returned in K.Dis.1260 of 2003 and K.Dis.1262 of 2003 dated 20.8.2003 without insisting the petitioner to pay 25% of the disputed tax as a pre-condition for admitting the appeal.

For Petitioner : Mr.A.Chandrasekaran in both W.Ps.

For Respondents : Mr.S.Kanmani Annamalai, AGP in both W.Ps.

COMMON ORDER

Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2 In both these writ petitions, the petitioner has challenged the notices issued by the appellate authority, refusing to entertain the appeal petitions on the ground that the petitioner has not filed 25% of the disputed tax. The petitioner had filed two appeals against the orders of assessment for the years 1996-97 and 1997-98.

3 The issue, as to whether the amendment which was made to the Act and came into effect on 10.6.1999, making it compulsory to make pre-deposit of 25% of disputed tax, can be applied retrospectively, is no longer res integra and has been decided in favour of the assessee in a decision of the Hon'ble First Bench of this Court in Deputy Commercial Tax Officer, Tirupur Central I Assessment Circle, Tirupur and others Vs. Cameo Exports and others[1]. In the said decision, it was held as follows :

> "25.In view of the foregoing discussion, we hold that the crucial date on which the right of the assessees to prefer an appeal under section 31 or section 36 of the Act is the date on which the returns are filed under the Act. In all these appeals, returns were filed long prior to the date when the provisions of section 31 of the Act was amended by virtue of Act 14 of 1999. Further more, it is not disputed by the parties that the aforesaid amendments to the Act have not been given retrospective effect as and from an anterior date and those amendments are prospective. Therefore, the appeals are liable to be entertained without insisting of pre-deposit of 25 per cent of the disputed tax as per the amended provisions of the Act."

4 In the light of the above decision of the Hon'ble First Bench, the impugned notices call for interference. Accordingly, both writ petitions are allowed and the impugned notices are set aside. The petitioner is directed to re-present the appeal papers before the first respondent. The first respondent shall entertain the same and proceed in accordance with law. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vvk

1 [2006] 147 STC 218 (Mad)

To

1.The Appellate Assistant Commissioner (CT)
C.T. Buildings, Madurai Road,
Virudhunagar.

2.The Deputy Commercial Tax Officer-I,
Rajapalayam.

1 cc to Spl. Government Pleader (Taxes) , Sr. 33340
1 cc to Mr.P. Radhakrishnan, Advocate, Sr. 32779

W.P.Nos.35575 and 35576 of 2003

PA (CO)
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