IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.25132 and 25133 of 2017
and
W.M.P.Nos.26568 to 26571 of 2017

M/s.Rajalakshmi Textile Processors Pvt., Ltd.,
Rep. By its General Manager – N.Duraisamy,
Ramanathapuram Pudur (PO),
B.P.Agraharam, Erode – 638 005.
Erode District. ... Petitioner in both WPs

Vs.

The Commercial Tax Officer,
Periya Agraharam Circle,
Erode, Erode District. ... Respondent in both Wps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the Respondent in his impugned proceedings made in TNGST 3075094/2002-03 dated 27.07.2017 and TNGST 3075094/ 2005-06 dated 11.08.2017 quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.S.Kanmani Annamalai

Additional Government Pleader

COMMON ORDER

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner has filed these writ petitions challenging the assessment orders dated 27.07.2017 and 11.08.2017 for the assessment years 2002-2003 and 2005-2006.

3.After elaborately hearing the learned counsel for the petitioner and carefully perusing the materials placed on record, it is clear that the present attempt of the petitioner is to reopen a concluded issue. The legal question is that (i) in a dyeing works contract, the goods to be incorporated may either be as goods or in some other form similar to the accretion or occasions due to the application of dyes and chemicals; (ii) whether the dyes and chemicals is distinguishable from that of consumables like fuel or welding electrodes which are exhausted or disappeared after the work executed. These two questions of law were considered by the Hon'ble Division Bench in the case of State of Tamil Nadu V. S.S.M. Processing Mills reported in (2014) 69 VST 455 and the answer to both the questions were against the assessee. The operative portion of the judgment reads as follows:

> "We are in respectful agreement with the decision of the Full Bench of the Kerala High Court. Applying this decision and read in the context of the decision of this Court reported in [2003] 129 STC 167 (Mad) in the case of (Apparels and Handloom Exporters Association V. State of Tamil Nadu), we do not find any justifiable ground to uphold the order of the Sales Tax Appellate Tribunal to hold that the transaction are not liable to tax.
>
> The fact that the chemicals used for bleaching is washed away in the process, by itself, would not be a justifiable ground to accept the case of the assessee that there was no transfer of property of any goods. The very fact of the yarn being bleached by a chemical process, by applying the chemical, will clearly point out that there is transfer of property of the chemical, hence, bleaching contract attracts sales tax as in the case of dyeing contract, when the chemicals are purchased from outside the State. Consequently, this court allow the tax case (revisions) filed by the State."

4.The aggrieved dealer viz., S.S.M. Processing Mills preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.10166-10168 of 2014. These appeals were dismissed as withdrawn by order dated 11.08.2014 giving liberty to the petitioner to raise other additional queries before the appropriate forum. Though such liberty was granted, the Hon'ble Supreme Court made it clear that they have not expressed any opinion with regard to the contention of the dealer that they wish to raise additional queries before the appropriate forum.

5.The learned counsel for the petitioner would submit that after the withdrawal of the Special Leave Petition, the dealer in the said case has filed additional grounds in Tax Case (Revision) No.69 of 2009 and 80 and 81 of 2011 and the same is pending. Firstly, the said decision does not relate to the petitioner, but concerns some other dealer. Furthermore, there is nothing placed on record to show that the said additional grounds have been entertained by the Hon'ble Division Bench in the case of S.S.M. Processing Mills. Even assuming it was entertained, unless the decision is rendered on those additional grounds and if the same is in favour of the dealer, then alone the petitioner would be entitled to canvass those grounds challenging the impugned orders. Thus, as on date, the judgment of the Division Bench in the case of S.S.M. Processing Mills has attained finality and holds the field. Therefore, the present attempt of the petitioner to argue contrary to the decision is clear attempt to reopen a settled issue in an indirect manner, which cannot be permitted.

6.For the above reasons, these Writ Petitions are dismissed. However, liberty is granted to the petitioner to file appeals against the impugned orders if so advised. In the event of such appeals being filed, the appellate authority shall exclude the period from 18.09.2017 till the receipt of the certified copy of this order while computing limitation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Commercial Tax Officer,
Periya Agraharam Circle,
Erode, Erode District.
+2 ccs to Ms.R.Hemalatha Advocate sr 73665
+1 cc to Spl Government Pleader sr 73584

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