IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7406 to 7410 of 2006 and
W.P.M.P.Nos.8150 to 8154 of 2006

W.P.Nos.7406 to 7409 of 2006

M/s.The United Nilgiri Tea
Estates Co. Ltd.,
No.23-24 Race Course Road,
Coimbatore. .. Petitioner in all 7406 to 7409

Vs.

1.The Commercial Tax Officer (FAC),
Trichy Road Circle, Coimbatore.

2.The State of Tamil Nadu, rep. by
The Secretary to Government,
Department of Commercial Taxes &
Religious Endowments,
Fort St. George, Chennai-600 009.
.. Respondents in WP.7406 to 7409

Prayer in W.P.No.7406 of 2006 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in TNGST. No.1880020/2000-01, on his files, quash the proceedings dated 23.01.2006 issued therein, and further forbear the first respondent not to impose sales tax in respect of the export sales effected by the petitioner herein, in view of the prohibition contained under Article 286 (1) (a) of the Constitution of India, in the light of the dictum of the Apex Court in the case of M/s.Leather Facts Co., reported in 66 STC 91.

Prayer in W.P.No.7407 of 2006 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in TNGST.No.299465/2001-02, on his files, quash the proceedings dated 23.01.2006 issued therein, and further forbear the first respondent not to impose sales tax in respect of the export sales effected by the petitioner herein, in view of the prohibition contained under Article 286 (1) (a) of the Constitution of India, in the light of the dictum of the Apex Court in the case of M/s.Leather Facts Co., reported in 66 STC 91.

Prayer in W.P.No.7408 of 2006 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in CST.No.299465/2000-01, on his files, quash the proceedings dated 23.01.2006 issued therein, and further forbear the first respondent not to impose sales tax in respect of the export sales effected by the petitioner herein, in view of the prohibition contained under Article 286 (1) (a) of the Constitution of India, in the light of the dictum of the Apex Court in the case of M/s.Leather Facts Co., reported in 66 STC 91.

Prayer in W.P.No.7409 of 2006 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in CST.No.299465/2001-02 on his files, quash the proceedings dated 23.01.2006 issued therein, and further forbear the first respondent not to impose sales tax in respect of the export sales effected by the petitioner herein, in view of the prohibition contained under Article 286 (1) (a) of the Constitution of India, in the light of the dictum of the Apex Court in the case of M/s.Leather Facts Co., reported in 66 STC 91.

W.P.No.7410 of 2006

M/s.Stanes Amalgamated
Estates Ltd., "SAE GARDENS",
3-A & B, Kamaraj Road,
Coimbatore-641 018. ... Petitioner

Vs.

1.The Commercial Tax Officer (FAC),
Trichy Road Circle, Coimbatore.

2.The State of Tamil Nadu, rep. by
The Secretary to Government,
Department of Commercial Taxes &
Religious Endowments,
Fort St. George, Chennai-600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in TNGST. No.1880019/2001-02, on his files, quash the proceedings dated

23.01.2006 issued therein, and further forbear the first respondent not to impose sales tax in respect of the export sales effected by the petitioner herein, in view of the prohibition contained under Article 286 (1) (a) of the Constitution of India, in the light of the dictum of the Apex Court in the case of M/s.Leather Facts Co., reported in 66 STC 91.

For Petitioner : Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondents: Mr.S.Kanmani Annamalai,
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2.The petitioners in these writ petitions are two in number viz., M/s.United Nilgiri Tea Estates Company and M/s.Stanes Amalgamated Estates Ltd. Both the petitioners own tea estates and are registered dealers on the file of the first respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred as "the TNGST Act") and Central Sales Tax Act, 1956 (hereinafter referred as "the CST Act". In these writ petitions, the petitioners are aggrieved by the notices issued by the first respondent proposing to re-open the assessment for the year 2000-01 both under the TNGST Act and CST Act and 2001-02 both under the TNGST Act and CST Act, in respect of the petitioner M/s.United Nilgiri Tea Industries Company Ltd., and for the assessment under the TNGST Act for the assessment year 2001-01 in respect of M/s.Stanes Amalgamated Estates Ltd. Since the issue involved in all these writ petitions are identical they were heard together and disposed of by this Common order.

3.In the impugned notice, the first respondent would state that on verification of the assessment records, it was found that the petitioners have claimed exemption towards sales to exporters through auctioneers at Coonoor and Coimbatore auction centers. But, the above sales are not covered by certificates as per the notification in CTRE/214(d)82-G.O.Ms No.876-CTRE dated 29.07.1982. Further, it has been stated that the auctioneers have got exemption in respect of the export sale on production of Form H by exporters/buyers and the petitioners are also allowed exemption on production of certificates furnished by auctioneers and not by actual buyers/exports as prescribed in the notification.

4.The following facts would be relevant to examine the correctness of the action of the first respondent in issuing the impugned notices.

5.The tea, which is grown by the petitioners in their estates is sold through auctioneers, who are popularly known as the tea brokers and in respect of the tea sold in public auctions, wherever there is a liability under the TNGST Act or the CST Act, necessary certificate is issued by the auctioneers giving particulars relating to the turnover and also the tax paid by them on the same condition accepted by the Sales Tax Department without raising any dispute. Based on the tax paid by the auctioneers hitherto, the petitioners were not called upon to pay tax once again and therefore, the first respondent treated the auctioneer and the petitioners to be one and the same person as the auctioneer acts on behalf of the petitioners only. A dealer who is effecting sales to merchant exporters for the purpose of export is required to produce a copy of the foreign order; the order should be placed on the local customer specifically to meet the earlier export obligation; and the very same goods should be exported. If the three obligations are fulfilled, the assessee is entitled for exemption on export of sales under Section 5(3) of the CST Act.

6.So far as the goods namely tea is concerned, which is sold at the public auction for export, the dealers found it difficult to fulfill the three conditions and hence, the Tea Planters' Association of Tamil Nadu submitted their representations dated 31.10.1981 and 02.11.1981, praying for grant of exemption by the State of Tamil Nadu in respect of tea which is sold in public auction for export. The Government considered the same and by G.O.No.876 dated 29.07.1982, decided to exempt the sale of tea at auction centers of Coonoor and Coimbatore for export from liability to tax by notification issued under Section 17 of the TNGST Act and the exemption was subject to the condition that the tea purchased at the auction center is exported within six months from the date of auction and the proof of export is also produced. Accordingly, a notification came to be issued by the Department granting exemption subject to those two conditions.

7.So far as the petitioners' case is concerned, at the time of the original assessment, the declaration was not filed. However, Form H declaration issued by the exporter in favour of the auctioneers was filed and the first respondent viz., the assessing officer verified the export documents, copies of the bills of lading, copies of the foreign buyers' order and copies of the invoice and satisfied himself that the goods were actually exported, and has granted exemption. On a perusal of the assessment orders for the relevant years, it is seen that there is a finding rendered to the said effect by the assessing officer. Thus, the issue would be as to whether the first respondent was justified in proposing to re-open the assessment on the ground that the petitioner has not produced the declaration form as stipulated in G.O.No.876 dated 29.07.1982.

8.So far as the form which has been stipulated in G.O.No.876 is concerned, it is seen that it is pari materia to the Form H declaration prescribed under the CST Act, and so far as the petitioner is concerned, the Form H declaration was furnished to the auctioneers, who acted as their brokers and all relevant details relating to the export of tea were available in such declaration and the first respondent having verified the Form H declaration was satisfied that the goods were actually exported and granted exemption.

9.However, these forms should be communicated after the auctioneers/tea brokers have obtained registration under the provisions of the TNGST Act/CST Act and after obtaining registration, they have issued necessary certificate for payment of sales tax clearly affirming the payment of tax and also confirming the valid submission of required documents to claim exemption in respect of the export sales on receipt from the buyers concerned within the stipulated time to the Commercial Tax Officer, Coimbatore. Copies of such certificates issued to tea brokers have been filed by the petitioners in the form of additional typed set of papers. From the certificate, it is seen that all the tea brokers have been registered under the provisions of the TNGST Act and have been assigned registration numbers. Thus, if the impugned assessment orders are allowed to be re-opened for the reasons stated by the first respondent in the impugned notice, it would virtually obliterate the benefit of exemption granted by the Government to promote the tea industry to ensure that the rates offered are competitive. The assessments were completed by the assessing officer stating that the petitioners have produced certificates from the tea brokers, who were registered dealers and tea has been sold in auction centers and tax sufference have been proved and exemption is allowed. Thus, the production of certificates as per the notification dated 29.07.1982, would be required only in cases where the tea brokers are not registered. However, I find that the tea brokers/petitioners have had transaction and have obtained registration and appropriate verification has been done by them, which has been recorded by the assessing officer while completing the assessment vide orders dated 31.01.2002, 20.01.2003 and 11.02.2003.

10.One more error committed by the first respondent is to issue an identical notice in respect of the assessment year 2000-01 under the provisions of the CST Act, wherein Form H declaration has been produced, which has been specifically recorded by the assessing officer while completing the assessment vide order dated 01.03.2002.

11.Thus, for the above reasons, this Court is fully convinced that the reason given in the impugned notices is not tenable and there is no justification on the part of the first respondent in re-opening the assessments. Thus, for all the above reasons, these writ petitions are allowed and the impugned notices are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer (FAC),
Trichy Road Circle, Coimbatore.

2.The Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes &
Religious Endowments,
Fort St. George, Chennai-600 009.

+1cc to Special Government Pleader SR.No.86130

KS(CO)
sm:8.1.2018

W.P.Nos.7406 to 7410 of 2006