IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.12168 of 2007
and
M.P.No.2 of 2007

M/s.Hi Tex,
Tirupur .... Petitioner

Vs

1.The Tamil Nadu Sales Tax Appellate Tribunal (AB), Coimbatore,
Rep. By its Secretary, Coimbatore.

2.The Appellate Assistant Commissioner (CT),
Pollachi.

3.The Commercial Tax Officer,
Central - II, Tirupur. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in its proceedings in C.T.A.No.50/1998, quash the order dated 14.03.2001 made therein and further direct the third respondent to decide issue relating to claim of exemption on pre-export sales under Sec.5(3) of the Central Sales Tax Act, 1956 in the light of the law laid down by the Division Bench Judgment of this Court in the case of Tirupur Exporters Association reported in 2003-04 (9) TNCTJ 213.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2.This writ petition has been filed challenging an order passed by the Tamil Nadu Sales Tax Appellate Tribunal and under normal circumstances, the matter should have been directed to be posted before the Hon'ble Division Bench.

3.However, the learned counsel for the petitioner submitted that since the issue is already covered by the decision in the case of M/s.The Tiruppur Exporters Association V. The State of Tamil Nadu & Others reported in 2003-04 (9) TNCTJ 213, the case was adjourned to enable the learned Government Advocate to get instruction in the matter.

4.Today, when the case is taken up for hearing, the learned Government Advocate, on instruction, submits that the issue is covered by the decision in the case of Tiruppur Exporters Association. The operative portion of the said judgment reads as follows:

> "12. .... Apart from the production of those documents if the assessing officer still feels that the dealers should produce the export agreement or order to fully satisfy himself whether the statutory pre-conditions for claiming exemption are complied with, he must so inform the dealer, to enable him to file an application to summon the documents from the Export House concerned or from the assessing officer who has jurisdiction over the Export House and obtain a copy of the foreign order or the agreement either from the Export House or from the assessing officer having jurisdiction over the Export House. We make it clear that the assessing officer has the full power to go into the question and enquire into the exemption claimed in Form H, as filing of Form H is not sacrosanct, but if the dealer is able to produce any other documents in proof of the conditions prescribed under section 5(3) of the Central Sales Tax Act, 1956, it will be open to the assessing officer to accept the same. If the assessing officer still is not satisfied, it will be open to him to insist on the dealer to file necessary application for summoning the documents as it is not expected that the assessing officer should call for the documents on his own when the dealer claims exemption under sec.5(3) of the Central Sales Tax Act, 1956 and it is for the dealer to produce necessary documents by filing necessary application with the requisite fee

for summoning the documents from the Export House or the assessing officer having jurisdiction over the Export House. We are of the view that the learned Single Judge was perfectly right in holding that it is not open to this Court to interfere with the assessment proceedings and it is open to the parties to rely on any statutory Rule, Regulation or order and proceed with the assessment in accordance with law. However, where the assessing officer has clearly indicated his mind that the dealer must produce the foreign agreement or the foreign order to claim exemption in Section 5(3) of Central Sales Tax Act, 1956 and if the dealer is not able to produce the same, the dealer may not get the exemption under section 5(3) of the Central Sales Tax Act, 1956, as the production of the foreign agreement or order seems to be, in the opinion of the assessing officer, the only mode of proof to claim exemption under section 5(3) of the Act.

13.The Supreme Court in the case of Commissioner of Sales Tax Vs. Indra Industries (248 ITR, 338) has held that the circulars issued by the Commissioner of Sales Tax would be binding on the said authority though it is not binding on the Court. We are of the view that the circular dated 11.11.1986 has been issued to soften the rigor of section 5(3) of the Central Sales Tax Act, 1956.

14.Accordingly, we hold that for claiming exemption of tax by the dealer under section 5(3) of the Central Sales Tax Act, 1956, the mere filing of Form-H alone is not sufficient and it is open to the assessing officer to conduct a detailed enquiry to find out whether the particulars contained in Form H are true or not. With the above clarification made to the order of the learned Single Judge, the writ appeal stands dismissed. No costs. Consequently, C.M.P.No.6109 of 1997 is closed.”

5.Following the above decision, the Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sgl

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1.The Secretary,
Tamil Nadu Sales Tax Appellate
Tribunal (AB), Coimbatore,
Coimbatore.

2.The Appellate Assistant
Commissioner (CT),
Pollachi.

3.The Commercial Tax Officer,
Central - II, Tirupur.

+1 CC to Mr.Raveendran, Advocate Sr.No. 75966

+1 CC to The Special Government Pleader(Taxes) High Court, Madras Sr.No. 76017

W.P.No.12168 of 2007

GJ II
MLT 22/11/2017