IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13042 & 13043 of 2009
and
M.P.Nos.1 & 1 of 2009

M/s.Asahi India Safety Glass Ltd.,
Rep by its Authorised Signatory
Mr.R.Kalaiselvan
76 to 81, SIPCOT Industrial Park
Irungattukottai-602 105.

...Petitioner in both

Vs

The Commercial Tax Officer
Sriperumbudur Asst Circle
Varadharajapuram-602103.

... Respondent in both

Prayer: Petition is filed under Article 226 of the Constitution of India for issuance a Writ of Certiorari, call for the records of the respondent in TNGST/1661420/2002-03, 2003-2004 and quash the impugned order dated 31.10.2008 as passed against the provisions of the Tamil Nadu Additional Sales Tax Act, 1970 and G.O.Ms.16 CT&RE dated 12.1.1998-Not.No.II(1)/CTRE/15/98 Gazette dated 4.2.1998 effective from 1.10.1998 to 30.09.2012 and G.O.Ms. No.381 dated 15.9.1997 respectively.

For Petitioner : Mr.P.Rajkumar
in both
For Respondent : Mr.S.Kanmani Annamalai
in both Additional Government Pleader

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of respondents.

2.These writ petitions have been filed challenging the proceedings of the respondent dated 31.10.2008 levying Additional Sales Tax.

3.The learned counsel for the petitioner submitted that the legal issues involved in the writ petitions squarely covered with the decision of the Hon'ble Division Bench in the case of HSI Automotives Ltd. Vs. The State of Tamil Nadu, rep by the Commercial Tax Officer, Chennai in Tax Case (Revision) No.92 of 2014 dated 16.09.2015.

4.One of the question which was framed for consideration before the Division Bench is as follows:-

> "(b)that once the sale of certain goods made to a certain buyer is exempt from the levy of both sales tax and additional sales tax, such sale may be included in the total turnover, but not in the taxable turnover, as otherwise, the purpose of exemption would be lost."

5.The above question was answered by the Division Bench on the following lines in favour of the Assessee :

> "40.Therefore, on the first question of law, we are of the considered view that the Tribunal committed an error of law in treating the exempted sales effected by the petitioners to M/s.Hyundai Motors India Limited, as part of the 'taxable turnover' of the petitioner for the purposes of Tamil Nadu Additional Sales Tax Act, 1970. Consequently, the levy of penalty was wrong and the second question has also to be answered in favour of the petitioner."

6.The learned Additional Government Pleader appearing on behalf of the respondent does not dispute the above legal position.

7.Thus, following the decision of the Hon'ble Division Bench, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

maya

To

The Commercial Tax Officer
Sriperumbudur Asst Circle
Varadharajapuram-602103.

+1 cc to Mr.R.Rajkumar Advocate sr 87160
+1 cc to Special Government Pleader Taxes sr 87594

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