IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T. SIVAGANANAM

W.P.No.31154 of 2003
and W.M.P.No.37932 of 2003

Tvl.Bojaraj Textile Mills Ltd., rep by
Director: M.K.Kaladhar Babu,
Sitalakshmi Mills Premises,
Thirunagar, Madurai. .. Petitioner

Vs.

1.The Sales Tax Appellate Tribunal, rep by
The Secretary, Additional Bench,
C.T.Buildings, Madurai-20

2. The Appellate Assistant Commissioner(CT)
Madurai(South),
C.T.Buildings, Madurai-20

3. The Deputy Commercial Tax Officer,
Thiruparankumdram Circle,
C.T.Buildings, Madurai-20 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent herein in Madurai Tribunal Appeal No.771 of 2000 dated 01.04.2003, quash the same in so far as the disallowance of claim of exemption on sales made to the Exporter on the turnover of Rs.17,90,450/- and direct the third respondent to consider the petitioner's claim of exemption on sales to exporter under Section 5(3) of the Central Sales Tax Act, 1956 on the said turnover on the basis of the documents to be produced by the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondents: Mr.K.Venkatesh
Government Advocate.

O R D E R

Heard Mr.A.Chandrasekaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. The petitioner has challenged the order passed by the first respondent, by which the appeal petition filed by the petitioner was partly allowed and partly dismissed. The appeal was filed because the Assessing Officer rejected the claim of the exemption made by the petitioner on the ground that the petitioner has not produced Form H declaration. The Tribunal has considered the two turnovers, which has been effected by the petitioner, which are export sales viz., for a sum of Rs.17,90,450 and a sum of Rs.21,49,970/-. So far as the first turnover is concerned, the first respondent confirmed the order of the assessment. With regard to the second turnover, the Tribunal observed that the Assessing Officer in his order stated that the petitioner has produced only copy of the Bill of Lading and not produced the Form H. Not stopping with that the first respondent has proceeded to state legal position and in fact, he has correctly stated the legal position as held by the Honourable Supreme Court in the case of Tvl.Dhampur Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Uttar Pradesh reported in 67 STC 440 as well as the order passed by this Court, holding that Form H is not mandatory. Having noted the legal position, the first respondent erroneously dismissed the appeal in part. The ultimate finding rendered by the first respondent is contrary to the observations contained in the previous paragraph viz., paragraph No.8.

3. Thus for the above reasons, the petitioner is entitled to succeed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

bri/vsm

To

1. The Secretary,
Sales Tax Appellate Tribunal,
Additional Bench,
C.T.Buildings, Madurai-20

2. The Appellate Assistant Commissioner(CT)
Madurai(South),
C.T.Buildings, Madurai-20

3. The Deputy Commercial Tax Officer,
Thiruparankumdram Circle,
C.T.Buildings, Madurai-20.

+ 1 cc to M/s.P.Radhakrishnan, Advocate,SR.47578

+ 1 cc to The Govt.Pleader(Taxes), SR.47635

W.P.No.31154 of 2003

KGK(CO)
NR 27/07/2017