IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.31893 of 2004 and
W.P.M.P.No.38625 of 2004

M/s.Be Yes Exports,
No.1, Senthil Rice Mill Compound,
Dharapuram Road,
Chettipalayam, Tirupur. ... Petitioner

Vs.

The Commercial Tax Officer,
Tirupur (Rural), Tirupur. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records of the respondent herein in CST 612567/- 1994-95 on his files, quash the proceedings therein dated 08.09.2004, and further direct the respondent to decide the issue relating to the claim of exemption on pre-export sales in the light of the law laid down by the Division Bench of this Hon'ble Court in Writ Appeal No.4 of 2003, dated 05.04.2004.

For Petitioner : Mr.B.Raveendran for M/s.Chandran

For Respondent : Mr.K.Venkatesh, Government Advocate

O R D E R

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

2. The petitioner is a manufacturer in Hosiery Garments and an assessee on the file of the respondent for the assessment year 1994-1995 under the provisions of the TNGST Act, 1959. The petitioner claimed exemption on the turn over relating to pre-export sales of Hosiery Garments. In support of such exemption, the petitioner filed Bills of Lading, proof of export and Form-H declarations. However, the claim of exemption was disallowed on the only ground that the petitioner failed to file the copies of the purchase orders of the foreign customers on the export house. Apart from that, there was a levy of penalty of 2% under section 12 (3) (b) (V) of the Act, read under section 8(2) of the CST Act, 1956.

3. Since the matter was pending before this Court in a litigation initiated by M/s.Tirupur Exporters' Association, the petitioner has filed this writ petition. The matter filed by the Tirupur Exporters' Association was heard by the Hon'ble Division Bench of this Court in the case of Tirupur Exporters' Association Vs. The State of Tamil Nadu & Others 2003-2004 (9) TNCTJ 213, and the Writ Appeal filed by the said association was dismissed by issuing certain clarifications. The operative portion of the order reads as follows:

> "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."

4. In the light of the above referred clarifications of the Hon'ble Division Bench, the writ petition is disposed of, by giving liberty to the respondent to conduct a detailed enquiry to find out whether the particulars found in Form-H are true or not and then proceed in accordance with law. No costs. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

gsk/rkm

To

The Commercial Tax Officer,
Tirupur (Rural), Tirupur.

+1 CC to Govt. Pleader (Taxes), sr 48324

W.P.No.31893 of 2004

SP(26/07/2017)