IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.19084 of 2007

and M.P.No.1 of 2007

Tvl.Rugmini Ram Raghav Spinners (P) Ltd.,
Represented by its Managing Director,
A.Gokul Krishnan,
No.33, RT Ponniahrajapuram,
Coimbatore - 1. .. Petitioner

..Vs..

The Commercial Tax Officer,
R.G. Street Circle, Coimbatore. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TNGST.1760453/05-06 dated 30.03.2007 and quash the same as being contrary to the judgment of this Court in W.P.No.34812 of 2005 dated 28.10.2006 (M/s.Sri Vignesh Yarns Private Ltd., Tirupur vs. Commercial Tax Officer, Tirupur (South) Assmt. Circle, Tirupur).

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

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

2.This writ petition has been filed challenging the assessment order dated 30.03.2007 under the provisions of the Tamil Nadu General Sales TAx Act (TNGST Act). At the time, when the writ petition was admitted, the Court recorded the pendency of the matter before the Hon'ble Division Bench in W.P.No.30694 of 2006. Thereafter, the learned counsel for the petitioner relied upon the decision of the Hon'ble Division Bench in the case of State of Tamil Nadu vs. Eastman Spinning Mills (P) Ltd., reported in (2013) 60 VST 41 (Mad), wherein the Hon'ble Division dismissed the tax case revision filed by the State and held as follows:

"Held, dismissing the petition, (i) that admittedly the dealer's unit enjoyed the benefits of the interest-free sales tax waiver scheme, in which event, the tax effect on the sales effected by the dealer was nil. All that the assessing authority had to see in the matter of considering the claim on the benefit of interest-free sales tax waiver was to find out as to whether the dealer had complied with the terms of the waiver scheme. Given the fact that the assessing authority had passed an order of assessment recognising the claim of the dealer for interest-free sales tax waiver of the liability on the first sales of cotton yarn, it did not matter whether the notification would have any application to the case of the dealer. Thus the revision petition was superfluous.

(ii) That in the context of the claim made in the revised return for exemption based on the notification not being considered, although the dealer could have stopped with the relief granted in the order of assessment in the form of waiver, yet, apparently to keep the records straight, it had gone on appeal before the Appellate Assistant Commissioner. The notification in question granted exemption from payment of tax under the Tamil Nadu General Sales Tax Act on cotton yearn manufactured and sold to registered exporters. The only condition subject to which exemption was granted was that the seller should produce proof of export before final check of accounts for the year to the satisfaction of the assessing authority concerned. There was no condition imposed therein that the export must be of cotton yarn alone. In the absence of any specific restriction in the notification as to the subject of export and in the face of the registration granted to the ultimate exporter as a registered exporter, the conditions of the notification were satisfied and the dealer had rightly claimed the benefit of exemption. Thus, in contrast to the proviso to Section 9 of the 1959 Act, under which the conditions prescribed in the notification are in specific terms as referable to sale of cotton yearn to registered exporters, the dealer had to produce the proof of export before the final check of accounts and the documents produced by the dealer clearly substantiated compliance with the conditions under the notification. The Tribunal rightly accepted the case of the dealer."

3.The revenue does not dispute with the above legal position. Thus, following the decision of the Hon'ble Division Bench, the writ petition is allowed and the impugned proceeding is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
R.G. Street Circle, Coimbatore.

+1 CC to Mr.R.Senniappan, Advocate SR.No.79188

+1 CC to The Special Government Pleader SR.No.78602

CO-PVS
ths : 30.11.2017

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