IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04 .12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15748 of 2006 & W.P.M.P.No.15523 of 2006

The Kundah Industrial Co. Op.
Tea Factory Ltd.,
rep. by its Deputy Director/
Special Officer, P.Shanmugham,
Yedakad, The Nilgiris-643 282. ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Uthagai (South), Uthagamandalam.

2.The State of Tamil Nadu, rep by
The Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St. George, Chennai-600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent herein in TNGST.2600026/2003-04 dated 24.03.2006, quash the same and to forbear the first respondent herein not to levy sales tax in respect of the turnover relating to export sales of tea by petitioners through auctioneers M/s.Tea Serve, Coonoor.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

******

O R D E R

The petitioner is an Industrial Co-operative Society, registered under the Societies Act run for the welfare of the small tea growers and it is affiliated to M/s.Tea Serve formed and run for the welfare of the small tea growers in the Nilgiris District. The petitioners are selling tea grown by their members through M/s.Tea Serve based at Coonoor, who are effecting sales through auction centers in Cochin, Coimbatore and Coonoor. M/s.Tea Serve, the auctioneers sell the goods locally within the State of Tamil Nadu; to buyers from outside the State on inter-state basis; to merchant exporters doing business within the State of Tamil Nadu. The petitioner is a registered dealer on the file of the first respondent and also on the file of the Commercial Tax Officer, Coonoor. M/s.Tea Serve issued certificates to the petitioner as to the nature of sale effected and payment of tax made to the sales tax authorities. The present issue relates to the sales effected by M/s.Tea Serve to exporters in the auction center for which exemption is claimed by M/s.Tea Serve under Section 5(3) of the CST Act, 1956. M/s.Tea Serve has claimed exemption on the ground of availability of order from foreign buyers and Form H received from the merchant exporters along with particulars thereon and bill of lading etc., which are filed before the assessing officer. In the background of these facts, the petitioner claimed exemption in respect of pre-export sales effected through their agents M/s.Tea Serve based on the certificate issued by M/s.Tea Serve, Coonoor. However, the first respondent rejected the claim on the ground that they have not complied with G.O.Ms.876 dated 29.07.1982.

2.Identical issue was considered by this Court in the case of M/s.The United Nilgiri Tea Estates Co. Ltd. and another vs. The Commercial Tax Officer, Coimbatore, and another in W.P.Nos.7406 to 7410 of 2006 dated 04.12.2017, and the writ petitions were allowed. The operative portion of the order reads as follows:

> "5.The tea, which is grown by the petitioners in their estates is sold through auctioneers, who are popularly known as the tea brokers and in respect of the tea sold in public auctions, wherever there is a liability under the TNGST Act or the CST Act, necessary certificate is issued by the auctioneers giving particulars relating to the turnover and also the tax paid by them on the same condition accepted by the Sales Tax Department without raising any dispute. Based on the tax paid by the auctioneers hitherto, the petitioners were not called upon to pay tax once again and therefore, the first respondent treated the auctioneer and the petitioners to be one and the same person as the auctioneer acts on behalf of the petitioners only. A dealer who is effecting sales to merchant exporters for the purpose of export is required to produce a copy of the foreign order; the order should be placed on the local customer specifically to meet the earlier export obligation; and the very same goods should be exported. If the three obligations are

fulfilled, the assessee is entitled for exemption on export of sales under Section 5(3) of the CST Act.

6.So far as the goods of tea is concerned, which is sold at the public auction for export, the dealers found it difficult to fulfill the three conditions and hence, the Tea Planters' Association of Tamil Nadu submitted their representations dated 31.10.1981 and 02.11.1981, praying for grant of exemption by the State of Tamil Nadu in respect of tea which is sold in public auction for export. The Government considered the same and by G.O.No.876 dated 29.07.1982, decided to exempt the sale of tea at auction centers of Coonoor and Coimbatore for export from liability to tax by notification issued under Section 17 of the TNGST Act and the exemption was subject to the condition that the tea purchased at the auction center is exported within six months from the date of auction and the proof of export is also produced. Accordingly, a notification came to be issued by the Department granting exemption subject to those two conditions.

7.So far as the petitioners' case is concerned, at the time of the original assessment, the declaration was not filed. However, Form H declaration issued by the exporter in favour of the auctioneers was filed and the first respondent viz., the assessing officer verified the export documents, copies of the bills of lading, copies of the foreign buyers' order and copies of the invoice and satisfied himself that the goods were actually exported, and has granted exemption. On a perusal of the assessment orders for the relevant years, it is seen that there is a finding rendered to the said effect by the assessing officer. Thus, the issue would be as to whether the first respondent was justified in proposing to re-open the assessment on the ground that the petitioner has not produced the declaration form as stipulated in G.O.No.876 dated 29.07.1982.

8.So far as the form which has been stipulated in G.O.No.876 is concerned, it is seen that it is pari materia to the Form H declaration prescribed under the CST Act, and so far as the petitioner is concerned, the Form H declaration was furnished to the auctioneers, who acted as their brokers and all relevant details relating to the export of tea were available in such declaration and the first respondent having verified the Form H declaration was satisfied that the goods were actually exported and granted exemption.

9.However, these forms should be communicated after the auctioneers/tea brokers have obtained registration under the provisions of the TNGST Act/CST Act and after obtaining registration, they have issued necessary certificate for payment of sales tax clearly affirming the payment of tax and also confirming the valid submission of required documents to claim exemption in respect of the export sales on receipt from the buyers concerned within the stipulated time to the Commercial Tax Officer, Coimbatore. Copies of such certificates issued to tea brokers have been filed by the petitioners in the form of additional typed set of papers. From the certificate, it is seen that all the tea brokers have been registered under the provisions of the TNGST Act and have been assigned registration numbers. Thus, if the impugned assessment orders are allowed to be re-opened for the reasons stated by the first respondent in the impugned notice, it would virtually obliterate the benefit of exemption granted by the Government to promote the tea industry to ensure that the rates offered are competitive. The assessments were completed by the assessing officer stating that the petitioners have produced certificates from the tea brokers, who were registered dealers and tea has been sold in auction centers and tax sufference have been proved and exemption is allowed. Thus, the production of certificates as per the notification dated 29.07.1982, would be required only in cases where the tea brokers are not registered. However, I find that the tea brokers/petitioners have had transaction and have obtained registration and appropriate verification has been done by them, which has been recorded by the assessing officer while completing the assessment vide orders dated 31.01.2002, 20.01.2003 and 11.02.2003.

10.One more error committed by the first respondent is to issue an identical notice in respect of the assessment year 2000-01 under the provisions of the CST Act, wherein Form H declaration has been produced, which has been specifically recorded by the assessing officer while completing the assessment vide order dated 01.03.2002.

11.Thus, for the above reasons, this Court is fully convinced that the reason given in the impugned notices is not tenable and there is no justification on the part of the first respondent in re-opening the assessments. Thus, for all the above reasons, these writ petitions are allowed and the impugned notices are set aside. No costs. Consequently, connected miscellaneous petitions are closed."

3.Learned counsel for the petitioner would submit that the issue involved in this writ petition is squarely covered by the decision in the case of M/s.The United Nilgiri Tea Estates Co. Ltd., (supra).

4.Learned Additional Government Pleader does not dispute the legal position.

5.In the light of the above, following the earlier decision in the case of M/s.The United Nilgiri Tea Estates Co. Ltd., (supra), this writ petition is allowed, the impugned order is quashed and the matter is remanded to the first respondent for redoing the assessment in accordance with law.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Deputy Commercial Tax Officer,
Uthagai (South), Uthagamandalam.

2.The Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes
and Religious Endowments,
Fort St. George, Chennai-600 009.

W.P.No.15748 of 2006

TR(09/01/2018)