IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

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

W.P.No.23595 of 2004

M/s. Bay- Forge Ltd.,
(Formerly Fomas India Ltd.,)
Palayanoor P.O..,
Vedanthangal Road,
Madurantakam (Tk)
Kancheepuram (Dt) - 603 308. ... Petitioner

vs.

1. The State of Tamil Nadu,
   rep.by its Secretary to Govt.,
   Department of Commercial Taxes
   Religious Endowments &
   Fort St.George,
   Chennai-600 009.

2. The Commercial Tax Officer,
   Alwarpet Assessment Circle,
   Greenways Road,
   Chennai 600 028. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Prohibition, prohibiting the respondents, and their men from levying, andcollecting Additional Sales Tax from the petitioner on exempted turnover and in excess of the rates applicable for each slab under the Additional Sales Tax Act 1970.

For Petitioner : Mr.A.P.Srinivasa Babu
For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

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

2. At the outset, the learned counsel appearing for the petitioner would submit that, the issue involved in this Writ Petition is covered by a decision of the Honourable Division Bench of this Court, in the case in (Gangotri Textiles Ltd., vs. The State of Tamil Nadu, rep. by Secretary, Department of Religious Endowments and Commercial Taxes) in W.P.No.16180 of 2004 etc., (batch), dated 17.11.2006. The learned counsel would further submit that, following the said decision, many Writ Petitions were disposed of, one such case being W.P.No.36926 of 2004, dated 29.06.2016. The learned counsel has also produced a copy of the said order as a reference, and submitted that, in the light of the aforesaid decision, the present Writ Petition may also be disposed of, on the same lines, as the present case also involve similar set of facts.

3. In the decision cited supra, the Honourable Division Bench has considered a similar issue and disposed of the matter with certain directions. At this stage, it would be beneficial to quote the operative portion of the order, dated 17.11.2006, which reads as follows:-

> "5. Admittedly, there is an alternative remedy available to the petitioners, that is, by way of appeal or revision. One or other petitioner(s) have already preferred appeal and in some of the cases as informed, the Appellate Authority has already passed orders. In this background we are not inclined to give any finding on merits under Writ Jurisdiction as it is open to the parties to raise all the issues as raised in these cases before the appropriate forum. However, if one or other petitioner has not preferred such appeal within the time or not filed revision application due to pendency of the writ petitions, we allow such petitioners to prefer such appeal against the order of assessment or revision petition against the appellate order within a period of 4 weeks with a petition for condonation of delay. In such cases, the concerned authority will determine the appeal(s) or revision application(s) as it may be, on merits preferably within four months, particularly on the issue as raised in these cases, that is whether the petitioners are liable to pay additional tax on total taxable turnover of the financial year or on the turnover which exceeds ten crores of rupees.

6. All the writ petitions stand disposed of with the aforesaid observation and direction. Consequently, connected miscellaneous petitions are closed. No costs."

4. In the light of the above, this Writ Petition is disposed of in terms of the above direction issued by the Honourable Division Bench, which the Assessing Officer shall scrupulously follow. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sd

1.The Secretary to Govt.,
Department of Commercial Taxes and
Religious Endowments &
Fort St.George, Chennai-600 009.
2. The Commercial Tax Officer,
Alwarpet Assessment Circle,
Greenways Road,
Chennai 600 028.

+ 1 cc to MR. A.P.Srinivas, Advocate Sr.50281
+ 1 cc to the Special Government Pleader Sr.50089

W.P.No.23595 of 2004

BR(CO)
EU 8.09.17