IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

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

W.P.No.47609 of 2006
and
M.P.No.1 of 2006

M/s.Kalaimagal Textiles
Rep. by its Proprietor - R.Anandan ... Petitioner

Vs.

1. The Special Committee
   Rep. by its Assistant Commissioner (SMR)
   Secretariat, Chennai-9

2. The Deputy Commercial Tax Officer
   Pollachi Road
   Palladam, Coimbatore ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st Respondent in its proceedings in SCP.No.46/2006 (CCT /M2/62127/2005) dated 29.09.2006 and to quash the same as illegal and contrary to law.

For Petitioner : Mrs.R.Hemalatha

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

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O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondents.

2. The petitioner is aggrieved by the order passed by the Special Committee under Section 16-D of the TNGST Act, 1959 (hereinafter referred to as 'the Act').

3. The respondents have approached this Special Committee on account of the fact that the petitioner did not avail the appeal

remedy available under the Act against the Assessment Order dated 10.06.2005. The Special Committee did not go into the merits of the assessment, but, opined that the assessing officer had given the dealer sufficient opportunity which they failed to avail and therefore, there is no violation of principles of natural justice, accordingly affirmed the Assessment Order.

4. When the writ petition was admitted on 08.12.2006, an order of Interim stay was granted subject to the condition that the petitioner pays 50% of the amount demanded in the assessment order within the time frame.

5.The learned counsel for the petitioner does not have any written instruction as to whether the interim order has been complied with or not.

6.Be that as it may, I am of the view that it would be in the interest of revenue to send back the matter to the Assessing Officer instead of keeping the matter pending. Since, the amount of disputed tax is not a substantial amount and in all probability, the dealer would have complied with the condition.

7.Thus, for the above reasons, this writ petition is allowed, the impugned order dated 29.09.2006 is set aside and the matter is remanded to the second respondent for fresh consideration. If the petitioner has already paid 50% of the amount demanded as ordered by this Court on 08.12.2006, he is entitled to treat the Assessment Order dated 10.06.2005 as show cause notice and submit their objections within 15 days from the date of receipt of a copy of this order, after which the second respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law.

8. If the petitioner did not comply with the conditional order, the petitioner shall pay 75% of the disputed tax as computed, and on such payment being made, the petitioner is entitled to treat the assessment order as show cause notice and send the authorised representative along with the documents and records for re-assessment.

9.Accordingly, this writ petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (SMR)
   Special Committee
   Secretariat, Chennai-9

2. The Deputy Commercial Tax Officer
   Pollachi Road
   Palladam, Coimbatore

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.74515
+1cc to the Special Government Pleader(T), S.R.No.74138

W.P.No.47609 of 2006

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CA(16/11/2017)

HIGH COURT OF JUDICATURE MADRAS
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