IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27885 of 2006
and
M.P.No.2 of 2006

Lux Hosieries Industries Ltd.,
609/8 ABC Kongu Kalyana Mandapam
AVP Layout
Angeripalayam Road,
Tirupur 641 603. ... Petitioner

Vs.

The Commercial Tax Officer,
Tirupur North,
Tirupur. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamu to call for the records of the respondent in CST No.335438/2003-04 and quash the order dated 21.08.2006, and further direct the respondent to rectify the assessment order and demand notice in Form 3, in CST No.335438/2003-04 dated 31.03.2006, by reducing the rate of tax in accordance with GO(Ms).No.75 dated 25.07.2006.

For Petitioner : M/s.G.Vardini Karthik

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

ORDER

Heard Mrs.G.Vardini Karthik, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The petitioner is a company engaged in the manufacture of hosiery garments and an assessee on the file of the respondent both under the Central Sales Tax Act, 1956 (CST) and the Tamil Nadu General Sales Tax Act, 1959 (TNGST). In this writ petition, the petitioner has challenged the order dated 21.08.2006 rejecting an application filed by the petitioner under Section 55 of the TNGST Act for rectifying the assessment order dated 31.03.2006 under the CST Act for the assessment year 2003-2004.

3.The petitioner filed the application under Section 55 of the Act by placing reliance on an Government Order in G.O.(Ms) No.75 dated 25.07.2006 and submitted that the Government has directed that 90% of the tax liability on Inter-state sales of hosiery goods from 13.05.2002 to 03.04.2005 without 'C' forms, be waived subject to the condition that the dealer had not collected more than 1% Central Sales Tax on such sales. The petitioner requested the respondent to refer to the Government Order and revise the assessment by exercising powers under Section 55 of the Act. This application has been rejected on the ground that there is no direction in the Government Order to levy tax below 10%.

4.This Court had an occasion to consider the case arising out of an identical circumstances in J.G.Hosiery Private Limited V. Special Commissioner & Commissioner of Commercial Taxes, Chennai and another in W.P.No.36217 of 2003 & W.P.No.1232 of 2005. The dealer in the said case had approached the Court by challenging the revision notices issued by his Assessing Officer proposing to levy and collect tax in excess of 1% on the inter-state turnover of the petitioner therein. The Court, by taking note of a case decided by the Appellate Authority in M/s.Rupa & Company Limited, disposed of the writ petitions, by directing the dealer to submit their objections before the concerned Assessing Officer. The operative portion of the order reads as follows:

> "3.The petitioner has approached this Court at this juncture, by placing reliance upon a circular issued by the Government in G.O.Ms.No.39, Commercial Tax Department, dated 04.04.2005. By referring to the said circular, it is submitted that the Government has granted waiver and reduced the rate of tax at 1%. The petitioner also placed reliance on order passed by the Appellate Deputy Commissioner (CT) (FAC), Pollachi in A.No.CST 21/2008 dated 10.10.2008 in respect of another similarly placed dealer M/s.Rupa & Co. Ltd., in which the appellate authority, after taking note of the legal position, has held as under:
>
> "14.In view of the above discussions and rulings of the Honourable Courts that the clarification of the Special Commissioner of Commercial Taxes, Chennai in the light of the notification issued by the Government giving the appellants the option to avail the rate of tax at 1% an interstate sale by not claiming exemption in respect of stock transfer under Section 6A shall

> qualify the appellants to avail the rate of tax at 1% under CST Act. The order of assessment at enhanced rate at 2% and 10% are ordered to be struck down.
>
> As the turnover liable for enhanced rate of tax is struck down there will not be any balance of tax and therefore there is no scope for levy of penalty in the absence of any difference tax due. Therefore, the levy of penalty under Section 9(2) read with Section 12(3)(b) of the TNGST Act is also struck down."

5.The learned counsel for the petitioner submitted that the petitioner would be satisfied if the matter is remanded back to the Assessing Officer with similar directions as in the case of J.G.Hosiery Private Limited.

6.Accordingly, the Writ Petition is allowed. The impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The petition filed by the petitioner under Section 55 of the Act dated 12.08.2006 stands restored to the file of the respondent, who shall decide the said petition, after taking into consideration the directions issued in J.G.Hosiery Private Limited (cited supra) and the respondent is directed to pass a speaking order on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. N costs. Consequently, connected miscellaneous petition is closed.

Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Tirupur North,
Tirupur.

+1CC to Mr.Arun kurian Joseph, Advocate SR.74302/17

+1CC to the Special Governmnet Pleader, High Court, Madras SR.NO.74459

W.P.No.27885 of 2006

GP
MLT 13/11/2017