IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.10.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.Nos.36217 of 2003 & 1232 of 2005
and
W.P.M.P.No.1374 of 2005

J.G. Hosiery Private Limited,
41, Aadi Parasakthi Koil Street,
Tiruppur – 7.

...Petitioner in both the W.Ps

Versus

1. Special Commissioner &
   Commissioner of Commercial Taxes,
   Ezhilagam, Chennai.

2. Commercial Tax Officer,
   Kongunagar Assessment Circle,
   Tiruppur.

...Respondents in both the W.Ps

Prayer in W.P.No.36217 of 2003: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the second respondent in CST.No.609328/2002-2003 and quash the notice dated 30.09.2003 and consequently, forbear the respondent from levying and collecting tax in excess of 1% on the inter state turnover of the petitioner.

Prayer in W.P.No.1232 of 2005: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus call for the records of the second respondent in CST No.609328/2001-2002 and quash the notice dated 31.12.2004 and further forbear the respondent from levying and collecting tax in excess of 1% on the inter state turnover of the petitioner.

For Petitioner in both the W.Ps : Mrs. C. Rekha Kumari

For Respondents in both the W.Ps : Mr. K. Venkatesh, Government Advocate

ORDER

Heard Mrs. C. Rekha Kumari, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate appearing on behalf of the respondents.

2. The petitioner has filed this writ petition challenging the notices issued by the second respondent dated 30.09.2003 and 31.12.2004 by which the petitioner has been directed to file their objections to the proposal made in the notices proposing to tax the transaction done by the petitioner at 10%. The second respondent has stated that the petitioner has effected sale of hosiery goods which are taxable at 1% with effect from 01.12.2001 subject to the condition that the dealer does not have any branch transfers or consignment sales during the year. Otherwise, it would be liable to 4% tax, if covered by "C" Declaration Form and if not covered by such "C" Declaration Form, it would be taxable at 10% under Section 8(2)(b) of the Central Sales Tax Act.

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 Mrs. 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."

4. The learned counsel for the petitioner would submit that the petitioner may also be granted an identical relief as in the case of Mrs. Rupa & Co. Ltd., cited supra, as the petitioner has approached this Court challenging an order of assessment assessing the petitioner to higher rate of tax, such a course could have been adopted. However, since the petitioner has approached this Court challenging a notice proposing to levy tax at 10%, the matter has to be necessarily remanded to the Assessing Officer to apply the above referred decision and pass an order.

5. In the light of the above, these writ petitions are disposed of by directing the petitioner to file their objections to the impugned notices, wherein the petitioner is entitled to place reliance upon the circular issued by the Government in G.O.Ms.No.39 dated 04.04.2005 and the order passed by the Appellate Authority in the case of Mrs. Rupa & Co. Ltd., and the respondent shall consider the same and pass appropriate orders on merits and in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chennai.

2. Commercial Tax Officer,
Kongunagar Assessment Circle,
Tiruppur.

+1 C.C. to M/S.C.Rekha Kumari Advocate SR.NO. 71800 & 71801

+1 C.C. to The Special Government Pleader (Taxes)72069

W.P.Nos.36217 of 2003 & 1232 of 2005 and
W.P.M.P.No.1374 of 2005

VS 30.10.2017