IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.13276 of 2007
and
M.P.Nos.1 of 2007 and 1 of 2008

M/s.Chola Textiles (P) Ltd.,
No.20, Dharapuram Road,
Thillai Nagar, Tirupur. ... Petitioner

Vs.

The Commercial Tax Officer,
Bazaar Circle, Tirupur. ... Respondent

PRAYER :
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in CST No.323196/2003-04, dated 28.02.2007 and quash the same and direct the respondent herein to accept the returns as provided under Section 12-C (1) of the Tamil Nadu General Sales Tax (Fourth Amendment) Act, 2006 (Tamil Nadu Act No.37 of 2006) read with Section 9(2) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.K.Vaitheeswaran
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

The challenge made in this writ petition is to the assessment order, dated 28.02.2007 passed by the respondent for the year 2003-04.

2.The case of the petitioner is that they are engaged in the business of manufacture and sales of cotton yarn. They effected inter-state sales, consignment sales, direct export and pre-export sales for the assessment year 2003-04. The respondent issued a notice dated 23.09.2006 seeking certain clarifications with reference to the business done by the petitioner, to which, the petitioner submitted its reply on 30.10.2006 along with necessary documents, such as, Bill of Lading, Shipping Bill, Export Invoice/Pre-Export Invoice, Form H declaration etc. However, the respondent passed the impugned assessment order along with penalty. Aggrieved over the same, the petitioner is before this Court with the present writ petition.

3.According to the learned counsel for the petitioner, as per Section 12-C of the Tamil Nadu General Sales Tax Act, 1959, the assessment order has to be passed, after 31.03.2007, whereas, the order impugned herein was passed on 28.02.2007 itself, which is premature in nature and also in violation of the provisions as contemplated under the TNGST Act. Hence, the learned counsel sought to allow this writ petition by setting aside the impugned order.

4.The learned Additional Government Pleader appearing for the respondent fairly conceded the submission so made by the learned counsel for the petitioner.

5.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, the assessment order dated 28.02.2007 passed by the respondent for the year 2003-04 is set aside and the matter is remanded back to the respondent for passing a fresh order, on merits and in accordance with law, that too, after affording due opportunity of personal hearing to the petitioner. Such an exercise shall be completed by the respondent within a period of six weeks from the date of receipt of a copy of this order.

6.This writ petition stands allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2
To
The Commercial Tax Officer,
Bazaar Circle, Tirupur.

+1cc to the Special Government Pleader(T), S.R.No.87498

W.P.No.13276 of 2007

MR(CO)
CS/02/04/2019