IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.11.2018
CORAM
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.20970 of 2007
and
M.P.No.1 of 2007

Shiv-Ha Trade Links,
represented by its Proprietor,
R.Govindarajan. ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Chengalpet Assessment Circle,
Chengalpet. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, to call for the records on the file of the first respondent herein in letter No.D.Dis./Acts Cell II/ 63845/06 (Clarification No.34/07), dated 26.3.2007 and to quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Mohammed Sheriff
Special Government Pleader (T)

ORDER

The petitioner has come up with this writ petition to challenge the order of the first respondent in letter No.D.Dis./Acts Cell II/ 63845/06 (Clarification No.34/07), dated 26.3.2007.

2. The learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents jointly submitted that the issue involved in this writ petition is squarely covered by the earlier order of this Court dated 15.12.2017 in W.P.Nos.15276 & 15277 of 2007. Therefore, learned counsel prayed similar order in this writ petition as well, for which, the learned Special Government Pleader(T) appearing for the respondents has no

serious objection.

3. This Court, vide order dated 15.12.2017 in W.P.Nos.15276 & 15277 of 2007, had considered the issue involved herein and allowed the aforesaid writ petitions in the following lines :

> "In these two writ petitions, the petitioner has challenged the clarification issued by the respondent under Section 28A of the Tamil Nadu General Sales Tax Act, 1959. The legal issue, which is relatable to the clarification issued by the Commissioner was considered by the Hon'ble Division Bench of this Court in the case of The State of Tamil Nadu v. Tvl.Sahara Enterprises in Tax Case (Revision) Nos.388 of 2011 and 1071 of 2006 dated 01.03.2012. In the said case, the Hon'ble Division Bench after taking into consideration the judgment in the case of Indian Sugar & General Industry Export Import Corporation Ltd., v. Commercial Tax Officer and others reported in (2002) 127 STC 339, dismissed the tax case revision filed by the revenue. The operative portion of the order reads as follows:
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> > "5.The above submission, in our view, must fail, as the said entry relates to woven fabrics of wool, whereas in the given case, the assessee had imported woven tapes, synthetic lining materials polyester printed fabrics etc., which are not woollen fabrics. Hence, in the absence of any entry in the Second Schedule relating to the goods in question, and admittedly the goods in question are declared goods in terms of Section 14 clause (vii) wherein it is stated that man made fabrics is covered under heading Nos.54.08, 54.09, 54.10, 54.11, 54.12, 55.07, 55.08, 55.09, 55.10, 55.11, 55.12, 58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 59.01, 59.02, 59.03, 59.05, 59.06 and 60.01 of the Schedule to

the Central Excise Tariff Act, 1985 (5 of 1986), which clause does not make any difference between the man made fabrics produced or manufactured in India or imported. The judgment in Indian Sugar & General Industry Export Import Corporation Ltd., v. Commercial Tax Officer and others, (2002) 127 STC 339, squarely applies to the present case and in that, this Court has observed in paragraphs 26 and 31 as follows:-

> 26.On principle also there is no reason for making a distinction between indigenous and imported goods, as long as the goods are considered to be important in inter-State trade and commerce. After importation, the goods enter into the domestic stream and the interest of the customer would be adversely affected, if the imported goods were to be taxed at a higher rate, exceeding the rate at which, the goods of similar description manufactured in India is subject. The object of the declaration is to promote the interest of the consumer and to ensure the smooth flow of inter-State trade and commerce.
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> ....
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> 31.In the anxiety to grant exemption to sugar produced or manufactured domestically the reference to sugar manufactured in a factory had been completely omitted in the second Schedule, which refers only to khandsari sugar and sugar manufactured without the aid of power. The assumption made by the revenue that by limiting the exemption to sugar manufactured or

produced in India, sugar imported prom outside would automatically be subjected to tax is a wholly erroneous assumption. Without specifying the rate and stage of levy, imported sugar could not be subjected to tax.

6.The learned Special Government Pleader would also, placing reliance on the judgment of this Court in Vardhaman Trade Links v. Tamil Nadu Taxation Special Tribunal and Others, (2008) 14 VST 495 (Mad), contend that in any case, the goods in question are declared goods and therefore, liable to be taxed at 4%. We have gone through the said judgment. It cannot be said that the said judgment has laid down a law that as in all cases, uniform tax of 4% would be levied in case of declared goods, particularly in that case, this Court was considering a tax levy at 20% under the State Act. Moreover, though a reference is made to the judgment of this Court in (2002) 127 STC 339, referred supra, there is no detailed discussion on that and the Division Bench has not disagreed with the views of the said judgment. Further, in that case, there was also no claim of exemption, as in the present case.

7.For the above reasons, we are not inclined to interfere with the order of the Tribunal and both the questions are answered against the Revenue and in favour of the assessee. The Tax Case Revisions are dismissed accordingly. No costs."

2.Since the above decision holds the field as on date, the clarification issued by the respondent-Commissioner has to be revised, in tune with the law laid down by the Hon'ble Division Bench in the aforesaid decision. The writ petitions are, accordingly, allowed, the impugned clarification is set aside and the matter is remanded to the first respondent for fresh

consideration, who shall issue appropriate clarification on the lines of the Hon'ble Division Bench referred supra. No costs. Consequently, connected miscellaneous petition is closed."

4. Following the aforesaid order, this writ petition stands allowed by setting aside the order dated 26.3.2007 passed by the first respondent. The matter is remanded back to the first respondent, for fresh consideration in line with the decision of the Division Bench referred to by this Court in the order cited supra. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Chengalpet Assessment Circle,
Chengalpet.

+1cc to Mr. N.Inbarajan, Advocate SR.No. 80615
+1 CC TO GOVERNMENT PLEADER SR.NO. 81477

W.P.No.20970 of 2007
and
M.P.No.1 of 2007

ASK(07/01/2019)