IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11021 of 2008
and M.P.No.1 of 2008

M/s.Turel Sales Corporation,
Rep.By its Authorised Signatory,
Mr.P.V.Parasuraman,
No.7,Haddows Road,
Chennai-600 006. ...Petitioner

Versus

1. The Appellate Assistant
 Commissioner (CT), III,
 I Floor, Kuralagam Annex,
 Chennai-108.

2. The Commercial Tax Officer,
 Nungambakkam Asst. Circle,
 Chennai. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the impugned records of the first respondent passed in A.P.No.100/2006 and quash the impugned order dated 13.02.2008 and further direct the respondent to grant concessional rate of tax at 3% on the turnover of Rs.32,71,320/- covered by form XVII declarations in view of the settled principles of Law as laid down by the First Bench of the Madras High Court in the case of M/s.Sree Murugan Engineering products reported in 148 STC 419 and in the case of Maruthi Handling Equipments reported in (2007) 7 VST 261 and also followed in the case of M/s.Aditya Envirotech Private Ltd. in W.P.No.26280/2007.

For Petitioner : Mr.P.RajKumar

For Respondents : Mr. V.Haribabu[for R3]
 Additional Government Pleader
 Commercial Tax

O R D E R

This writ petition has been filed to call for the impugned records of the first respondent passed in A.P.No.100/2006 and quash the impugned order dated 13.02.2008 and further direct the respondent to grant concessional rate of tax at 3% on the turnover of Rs.32,71,320/- covered by form XVII declarations in view of the settled principles of Law as laid down by the First Bench of the Madras High Court in the case of M/s.Sree Murugan Engineering products reported in 148 STC 419 and in the case of Maruthi Handling Equipments reported in (2007) 7 VST 261 and also followed in the case of M/s.Aditya Envirotech Private Ltd. in W.P.No.26280/2007.

2. The petitioner has challenged the impugned order passed by the first appellate authority by order dated 13.02.2008 wherein, the order dated 10.03.2006 made in revised assessment by the second respondent has been confirmed.

3. The order of the second respondent precedes two notice dated 03.02.2006 seeking to revise the averment for assessment for the year 2002-2003 to bring the turnover of Rs.32,71,320/- at 7%(10%-3%).

4. An order dated 30.06.2004 has been passed by the second respondent for the assessment year 2002-2003 and confirmed the proposal as follows:

> " The objections were considered carefully and overruled for the reasons stated in the notice. The decision of the first appellate authority for the year 2003-2004 does not operate as a for revision of assessment for the year 2002-2003 there is no re judicate in tax law.
>
> I therefore confirm the proposal as follows:

		Tax	SC
Sale against Form-XVII disallowed (01.04.2002 to 30.06.2002)	Rs.582300/- at 1%	40761/-	--

		Tax	SC
Sale against Form-XVII disallowed (01.07.2002 to 31.03.2003)	Rs.2689020/- at 1%	188231/-	9412/-
Sale to EOU disallowed	Rs.1126236/- at 10%	112624/-	5631/-
	Rs.4397556/-	341616/-	15043/-

Tax due : Rs. 3,41,616.00
Tax Paid : Rs. Nil
Balance : Rs. 3,41,616.00

5. Both the pre-assessment notice and order dated 03.02.2006 are silent as to how the claim for assessment under section 3(5) read with Eighth Schedule is not available to the petitioner. The said order also is non-speaking. The petitioner has also not clearly replied to the said notice. The petitioner has merely stated that the basis for claiming exemption was Form 17 declaration given by the buyer and thereafter, in the light of several decision of this High Court including the decision of Division Bench of this court in the case of M/s.Sree Murugan Engineering products reported in 148 STC 419, the proceedings for revising the assessment cannot be made against the petitioner. The said decision has been followed by another decision of this court in the case of M/s.Aditya Envirotech Private Ltd. in W.P.No.26280/2007.

6. As the revised assessment order dated 10.03.2006 does not discusses as to how the proposals contained in notice dated 03.02.3006 are sustainable, it is not sustainable. However, in the impugned order, there are some discussion by comparing few paragraphs in the M/s.Aditya Envirotech Private Ltd, that the goods will fall under the eighth schedule of the TNGST Act.

7. I am of the view that, the issue relating to classification of goods cannot be decided on merits under Article 226 of the Constitution of India as they relate to several disputed questions of fact which has to be addressed in a proper assessment proceedings and thereafter, before in an appeal before the Appellate authority.

8. In this case, the petitioner has not filed the second appeal before the Appellate authority against the impugned order. At the same time, it would unfair to direct the petitioner to file an appeal. It is noticed that there is no discussion on the basis on which the claim for exemption has been denied to the petitioner.

9. The petitioner has also not clarified as to how the goods in question were assessable to tax under Section 3(5) of the Act. The petitioner has merely claimed concession based on the strength of Form 17 given by the buyer and has stated that if at all there was any tax payable, it ought to have been recovered from the buyer.

10. Before claiming concession under Section 3(5) on the strength of Form 17 issued by the buyer, it was also incumbent for the petitioner to satisfy the authority as to how the goods under assessment were classifiable under relevant schedule to the Act.

11. Therefore, I am of the view that the end of justice will be met if the case is remanded back for reconsideration of the issue as to whether the sewing machine sold by the petitioner during the relevant assessment year fell within the purview of Eighth Schedule for the petitioner to claim concession/exemption under Section 3 (5) of the TNGST Act.

12. In view of the above, revised assessment order dated 10.03.2006 passed by the second respondent and the impugned order dated 13.02.2008 passed by the first respondent are set aside and the case is remanded back to the second respondent for reconsideration.

13. Needless to state, the 2nd respondent shall pass a speaking order also giving the petitioner to file additional representation and after hearing the petitioner. The second respondent may complete the proceedings within a period of six (6) weeks from the date of receipt of copy of this order.

14. Accordingly, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Appellate Assistant
   Commissioner (CT), III,
   I Floor, Kuralagam Annex,
   Chennai-108.

2. The Commercial Tax Officer,
   Nungambakkam Asst. Circle,
   Chennai.

+1cc to M/S.P.Rajkumar, Advocate Sr.72462
+1cc to the Special Government Pleader Sr.73080

W.P.No.11021 of 2008
and M.P.No.1 of 2008

cnr[co]
srg 26/11/2018