IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2018
CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.8435 of 2009
and M.P.No.2 of 2009

M/s.Shree Sakthi Manufacturing &
Marketing Company,
Rep. by its Prop. N.Nagendran,
36, Nehru Street, Ram Nagar,
Coimbatore-9. .. Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai-5.

2.The Assistant Commissioner [CT],
Ram Nagar Assessment Circle,
CT Buildings,
Dr.Balasundaram Road,
Coimbatore 641 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the second respondent in TNGST No.1980116/2005-06 dated 31.03.2009 and quash the same as illegal, arbitrary and against the provisions of the Act and contrary to the judgment of the Hon'ble Special Tribunal reported in 1996-97[2] TNCTJ page 81 in so far as the levy over and above 10% is concerned.

For Petitioner : Mr.K.Soundararajan
For Respondents : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2.The petitioner, who is a registered dealer on the file of the second respondent, under the provisions of the erstwhile Tamil Nadu General Sales Tax Act (hereinafter, referred to as 'the TNGST Act') has filed this Writ Petition, challenging the notice issued under the TNGST Act for the Assessment Year 2005-06, dated 31.03.2009, proposing to assess the sale of paper based laminated sheets to tax at 16%.

3.Mr.K.Soundararajan, the learned counsel appearing for the petitioner submits that, when an identical Writ Petition, (i.e. W.P.No.5959 of 2009) came up for consideration, this Court, in the light of the decision rendered in the case of Sundek India Ltd., Chennai Vs. CCT, Chennai and another) reported in [(2009) 4 CTC 858], which was confirmed by the Division Bench of this Court, allowed the said Writ Petition, by order, dated 07.07.2017. The learned counsel produced a copy of the said order, dated 07.07.2017 for reference of this Court, and submitted that, following the said decision, the present Writ Petition may be allowed.

4.Mr.K.Venkatesh, the learned Government Advocate for the respondents does not dispute the legal position and agrees that the issue involved in this Writ Petition is covered by the decision rendered in the above referred case.

5.On a perusal of the decision relied upon by the learned counsel for the petitioner, it is seen that this Court, in the light of the decision rendered in the case of Sundek India Ltd., Chennai (referred supra) allowed W.P.No.5959 of 2009, by order, dated 07.07.2017. In this connection, it would be apposite to quote the relevant portion from the said order, and it is extracted as herein below:-

> "3.An identical issue was considered by this Court in the case of the Sundek India Ltd., Chennai Vs. Commissioner of Commercial Taxes, Chennai and another) reported in [(2009) 4 CTC 858], and the decision was rendered in favour of the assessee. This order was put to challenge before the Division Bench in Commissioner of Commercial Taxes, Chennai Vs. Sundek India Ltd., in W.A.No.1181 of 2011, and the Division Bench, by judgment, dated 05.08.2015, dismissed the Appeal, holding that the revenue was not justified in demanding tax at 16% and the correct rate of tax to be collected is only 10%. Thus, the impugned notice has to be held to be unsustainable in law.
>
> 4.Following the above referred decision, the Writ Petition is allowed and the impugned order is set aside. No costs. Connected miscellaneous petition is closed."

6.Thus, following the above referred decision, the present Writ Petition is allowed, and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai-5.

2.The Assistant Commissioner [CT],
Ram Nagar Assessment Circle,
CT Buildings,
Dr.Balasundaram Road,
Coimbatore 641 018.

+1cc to Mr.K.Soundarajan, Advocate, S.R.No. 771

+1cc to the Government Pleader, S.R.No.1179

W.P.No.8435 of 2009
and M.P.No.2 of 2009

RRK(30/01/2018)