IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.44190 of 2002

M/s.Insap Flexibles & Engineers Private Limited
252, Angappa Naicken Street, Chennai 600 001 ...Petitioner

-Vs-

1.The Commercial Tax Officer, Esplanade I
Assessment Circle, Kuralagam,
Chennai 600 108.

2.The Sales Tax Appellate Tribunal
Additional Bench, Chennai 600 104. ..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to call for the records in TA No.572 of 2000 dated 29.06.2001 with a direction to the first respondent to entertain the duplicate 'C' Form and Form 'H' for Rs.2.21,442 and original 'C' Form for Rs.44,032/-.

For Petitioner : No appearance
For Respondents : Ms.G.Dhanamadhri,
Government Advocate

O R D E R
(Order of the Court was made by DR.VINEET KOTHARI, J.)

None present for the petitioner. Heard the learned counsel for the Revenue Ms.G.Dhana Madhiri.

2. This petition has been directed against the impugned order of the learned Sales Tax Appellate Tribunal dated 14.05.2002 by which the learned Tribunal dismissed the Review Application filed by the applicant M/s.Insap Flexibles & Engineers Private Limited. The said Review Application was filed by the Assessee, who had failed to furnish the original Declaration Form 'C' and Form 'H' for claiming concessional rate of tax under the provisions of the Sales Tax Act. The

original appeal was dismissed by the learned Tribunal way back on 29.06.2001 and the Review Application was filed by the Assessee coming with the case that the Assessee intends to file the duplicate Form 'C' for the turn over of Rs.1,99,266/- and duplicate Form 'H' for the turn over of Rs.22,176/-. The learned Tribunal dismissed the Review Application by the impugned order holding that there cannot be said to be material facts, which were not within the knowledge of the Assessee with due diligence and therefore, the Review Application was not maintainable under Section 37(7) of the TNGST Act. The operative portion of the order passed by the learned Tribunal is quoted below for ready reference.

> "6. Point : We find that the TA No.572/2000 was dismissed on 29.06.2001 stating that the applicant has not filed any declaration forms for verification before us to allow the reduced, concessional rate of tax 4%. But the applicant now in this application pleaded that they are now filing the duplicate 'C' forms for Rs.1,99,266/- and form 'H' duplicate and duplicate bill of lading for Rs.22,176/-. The facts urged before us in this review application is whether the application filed on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge when the orders were passed in TA.572/2000 dt.29.06.2001. On perusal of records, we find that the applicant has come before us in this application to consider the duplicate declaration forms for a turnover of Rs.1,99,266/- and for Rs.22,176/- and the application is not filed on the basis of discovery of new and important facts which after the exercise of due diligence were not within his knowledge when the orders were passed in the appeal. In these circumstances, this Review Application deserves no consideration by us and accordingly the Review Application is dismissed.
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> 7. In fine, the Review Application in TRA 10/01 is dismissed."

3. Learned counsel for the Revenue has submitted that the Honourable Supreme Court in the case of "Indian Agencies (Regd.) Bangalore -Vs- Additional Commissioner of Commercial Taxes, Bangalore" reported in (2005) 2 Supreme Court Cases 129, following the earlier judgment of the Honourable Supreme Court in the case of "Kedarnath Jute Mfg. Co., -Vs- Commercial Tax Officer" reported in 1966 AIR 12 , has again reiterated the position that the concessional rate of tax cannot be claimed on the basis of duplicate 'C' Forms and original forms are required to be furnished by the Assessee for claiming such concessional

rate of tax. The relevant portion of the Judgment is quoted below for ready reference.

> "25.The learned senior counsel for the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or any doubts as to the possession by the purchasing dealer on a certificate enabling the sellers to obtain the concessional rate of tax under Section 8 of the Act. Under such circumstances, the authorities should not have taken the strict view in rejecting the claim of the concessional rate of tax. At first sight, the argument of the learned counsel for the appellant appears to be genuine and acceptable but considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the questions involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12(3) till after his claim was rejected by the Assessing Authority. Having made no attempt to comply with the mandatory provisions, he disentitled himself from getting the concessional rate. Even otherwise, in our view, it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Tax Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to be strictly construed and that unless there is strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax.
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> 26. We are of the opinion that a liberal construction was not justified having regard to the scheme of the Act and the Rules in this regard and if there was any hardship, it was for the legislature to take appropriate action to make suitable provisions in that regard. It is also settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.

4. Having heard the learned counsel for the Revenue and since nobody has appeared on behalf of the Assessee, we are of the opinion that the present writ petition filed by the Assessee has no merit and deserves to be dismissed. Not only

the controversy on merits is covered by the decision of the Honourable Supreme Court consistently, but the scope of the Review prescribed under Section 37(7)(a) of the TNGST Act also does not permit the Tribunal to review the original order made on the basis of the claim of the Assessee that he was now ready to file the duplicate 'C' and 'H' forms to avail concessional rate of tax / exemption from payment of tax, and it is only upon discovery of the new and important facts, which were not within the knowlege of the Assessee despite due diligence, there can be ground for review, which is not the case in the present facts of the case.

5. Since the Assessee was not entitled to claim the concessional rate of tax / exemption from payment of tax on the basis of duplicate 'C' and 'H' forms as per the law settled, the learned Tribunal cannot be said to have erred in rejecting the Review Application filed by the Assessee. Therefore, the present Writ Petition is without any merit and deserves to be dismissed. The same is accordingly dismissed. However, there shall be no order as to the costs. A copy of the order shall be sent to both the parties.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

KST

To

1.The Commercial Tax Officer, Esplanade I
Assessment Circle, Kuralagam,
Chennai 600 108.

2.The Sales Tax Appellate Tribunal
Additional Bench, Chennai 600 104.

3. M/s.Insap Flexibles & Engineers Private Limited
252, Angappa Naicken Street, Chennai 600 001

+1 CC to Govt. Pleader sr 420.

W.P.No.44190 of 2002

SSD(CO)
SP(21/02/2020)