IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.26130, 26131, & 26132 of 2006

M/s.Mohanlal Jewellery,
rep.by its Proprietor Mohanlal Khatri,
No.246, N.S.C. Bose Road,
Chennai – 600 079.

... Petitioner
in all Writ Petitions

Vs

1.The Commercial Tax Officer,
Peddunaickenpet (South) Assessment Circle,
191, N.S.C.Bose Road,
Chennai – 600 001.

2.The State of Tamilnadu
rep.by the Secretary to Government
Department of Commercial Taxes and
Religious Endowments Fort St. George,
Chennai – 600 009.

... Respondents
in all Writ Petitions

Writ Petitions are filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in L.T.No.2049/2002-03, L.T.No.2049/2003-04 and L.T.No.2049/2004-05 dated 19.08.2004 & 01.09.2005 and quash the same as illegal and against law laid down by the Supreme Court in the case of Godfrey Phillips India Ltd. reported in 139 STC 537.

For Petitioner : Mr.D.Trilokchand Chopda,
in all WPs

For Respondents: Mr.V.Haribabu
Addl. Govt. Pleader, for R1 & R2
in all WPs

COMMON ORDER

In all these writ petitions, the assessment orders under the Tamil Nadu Tax on Luxuries Act, 1981, for the assessment years 2002-03, 2003-04 and 2004-05 are under challenge.

2. The Honourable Apex Court in the case of M/s.Godfrey Philips India Ltd., V. The State of U.P., reported in 139 STC 537, had held that the State Government imposing Luxury Tax on gold, silver, platinum jewellery and precious stones is ultra vires the Constitution of India. Following the decision in M/s. Godfrey Philips India Ltd., V. The State of U.P., this Court had also in various writ petitions including W.P.Nos.26573 to 26575 of 2009, had passed an order dated 23.12.2009, set aside the assessment orders therein, and directing the respondents to pass orders on the refund claim made. The relevant portion of the said order reads as follows:

> "3.The petitioner placed reliance on the decision of the Supreme Court reported in 139 STC 537 - M/s.Godfrey Philips India Ltd v. The State of U.P., wherein it is held that the State Government imposing Luxury Tax on gold, silver, platinum jewellery and precious stones is ultra vires the Constitution of India. Based on the decision of the Apex Court, the petitioner approached this Court for refund of the tax paid, in W.P.Nos.114 to 116 / 2009, wherein, by a common order dated 16.07.2009, this Court set aside the assessment orders and granted liberty to the petitioner to file application seeking refund before the respondents and directed the respondents to entertain the application and decided the same on merits within a period of two weeks from the date of the application of the petitioner. Based on that, the petitioner made a representation on 10.08.2009 seeking refund of the amount. The said request was however rejected by the respondents taking the view that, in the decision of the Apex Court 139 STC 537 - M/s.Godfrey Philips India Ltd v. The State of U.P., there is no direction for refunding the taxes collected by the assessee. The petitioner challenges the said order based on the orders passed by this Court in similar set of circumstances on an earlier occasion.
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> 4. A reading of the orders passed by the respondents dated 16.10.2009, 16.10.2009 and 30.09.2009, particularly disclosed no logic for rejection. The respondents are bound by the decision of the Apex Court reported in 139 STC 537 - M/s.Godfrey Philips India Ltd. V. The state of U.P. Given the fact that the levy is an indirect tax, the respondents can only insist upon the proof

that the liability had not been passed on to the customer by the assessee. As such, the respondent has lost the track of reasoning in the decision of the Apex Court.

5. In the Circumstances, I have no hesitation in setting aside the orders of the respondents; thereby the respondents are directed to pass orders on the refund claim, applying the decision of the Apex Court reported 139 STC 537 - M/s.Godfrey Philips India Ltd. V. The State of U.P. The petitioner is directed to give a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and produce necessary invoice and details to show that the liability has not been passed on to the customers. On the evidence produced, the respondents shall grant the refund to the petitioner, thereby pass orders on the representation of the petitioner within a period of six weeks from the date of receipt of such representation."

3. In view of the decision of the Honourable Apex Court, in M/s.Godfrey Philips India Ltd., V. The State of U.P., and following views taken by this Court in the present writ petitions, I am constrained to set aside the present impugned assessment orders also.

4. In the light of the above observations, the assessment orders in L.T.No.2049/2002-03, L.T.No.2049/2003-04 and L.T.No.2049/2004-05 dated 01.09.2005, are set aside. The petitioner is granted liberty to make an application seeking refund of claim to the respondents, in the light of the decision taken in this order, within a period of 30 days from the receipt of a copy of this order. On receipt of such application, the respondents shall pass an appropriate order in the light of the decision made in this order and as expeditiously as possible, in any event within a period of three months from the date of receipt of such a refund application. The writ petitions stand allowed, accordingly. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To,
1.The Commercial Tax Officer,
Peddunaickenpet (South) Assessment Circle,
191, N.S.C.Bose Road,
Chennai - 600 001.

2.The State of Tamilnadu
rep.by the Secretary to Government
Department of Commercial Taxes and
Religious Endowments Fort St. George,
Chennai - 600 009.

+1 CC to Govt. Pleader (T) sr 66480.
+1 CC to Mr.T. Pramod Kumar, Advocate sr 65805.

W.P.Nos.26130, 26131, & 26132 of 2006

PP(CO)
SP(06/09/2019)