IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.35998 & 35999 of 2006
and
W.M.P.Nos.1, 1 of 2006

Weathercover Industries,
Represented by its Proprietor,
Suryanarayana Moorthy Mushti,
No.12, (Old No.K-86) 14th Street,
K-Block, Anna Nagar East,
Chennai - 600 102. ... Petitioner in both W.Ps

Vs.

The Deputy Commercial Tax Officer,
Amaindakarai Assesment Circle,
Third Floor, Kuralagam Annexe,
Chennai - 600 108. ... Respondent in both W.Ps

Prayer in W.P.No.35998 of 2006: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in TNGST/1023003/2003-04 dated 09.06.2006 and quashing the same with a direction to pass orders of assessment after considering the explanation filed on 22.09.2005.

Prayer in W.P.No.35999 of 2006: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in CST/774798/2003-04 dated 09.06.2006 and quashing the same with a direction to pass orders of assessment after considering the explanation filed on 22.09.2005.

For Petitioner : Mr.K.Narayanan for Mr.N.Inbarajan
in both W.Ps
For Respondent : Mr.Mohammed Shaffiq
in both W.Ps
Special Government Pleader (Taxes)

C O M M O N   O R D E R

These two Writ Petitions have been filed seeking the following orders:

W.P.No.35998 of 2006: to call for the records on the files of the Respondent herein in TNGST/1023003/2003-04 dated 09.06.2006 and issue a Writ of Certiorarifed Mandamus to quash the said order and consequently direct the Respondent to pass orders of assessment after considering the explanation dated 22.09.2005.

W.P.No.35999 of 2006: to call for the records on the files of the Respondent herein in CST/774798/2003-04 dated 09.06.2006 and issue a Writ of Certiorarifed Mandamus to quash the said order and consequently direct the Respondent to pass orders of assessment after considering the explanation dated 22.09.2005.

2. The short issue that arises for consideration in these Writ Petitions is whether the impugned Assessment Orders under the Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act) and Central Sales Tax Act, 1956 (the CST Act) should be quashed in view of the non consideration of the objections said to be submitted by the Petitioner on 22.09.2005 and the salient facts are us under.

3. The Respondent issued a pre-assessment notice on 30.06.2005 calling upon the Petitioner to show cause as to why tax should not be imposed at 12% on cotton rain covers for two wheelers as per Clarification No.100 of 2003 dated 12.05.2003 by classifying the said cotton rain covers as residuary items under Entry No.40 in Part-D to the First Schedule of the TNGST Act.

4. The Petitioner states that it submitted objections dated 12.09.2005 to the said pre-assessment notice wherein it was pointed out that Clarification No.100 of 2003 pertains only to cars and not to two wheelers and that, therefore, this clarification cannot be relied upon in respect of two wheelers. According to the Petitioner that the said objections dated 12.09.2005 were refused to be accepted by the Respondent when hand delivery was attempted.

5. Thereafter, the Respondent completed the assessment and issued Assessment Orders dated 09.06.2006 bearing Assessment Nos.TNGST/1023003/2003-04 and CST/774798/2003-04 (Assessments by the TNGST and CST authorities respectively). In the said Assessment Orders, it is recorded that the dealers have not filed objections to the pre-assessment notice because they have

no objections to the same. Moreover, the Assessment Officer in the TNGST Act Assessment Order, has relied upon Clarification No.70 of 2006 dated 12.05.2006 which stipulates that rain covers for cars and two wheelers shall be taxable at 12% in Residuary Entry No.40 of Part-D to the First Schedule of the TNGST Act. Accordingly, the amounts demanded in respect of TNGST and CST Acts were confirmed by the Assessing Officer in the respective Assessment Orders.

6. The learned counsel for the Petitioner submitted that the pre-assessment notice referred to Clarification No.100 of 2003 which applies only to cars and not to two wheelers and that rain covers for two wheelers were earlier classified under Entry No.70 in Part-B to the First Schedule of the TNGST Act and were taxed at 4%. He further submitted that the objections to the pre-assessment notice dated 30.06.2005 were refused by the Respondent and that, therefore, the objections of the Petitioner were not considered while passing the impugned Assessment Orders.

7. The learned counsel for the Respondent fairly submits that there is a discrepancy with regard to the clarifications that were adverted to in the pre-assessment notice and Assessment Orders.

8. This Court carefully considered the affidavit, counter affidavit, documents and submissions of the counsel.

9. It is evident that the pre-assessment notice dated 30.06.2005 refers to Clarification No.100 of 2003 which applies only to cars and not to two wheelers. Equally, it is evident that the Assessment Order under the TNGST Act refers to Clarification No.70 of 2006, which pertains to both cars and two wheelers, and that this clarification has been referred to for the first time in the Assessment Order. The objections of the Petitioner have also not been considered while issuing the impugned Assessment Orders, albeit on account of non-receipt thereof.

10. Therefore, in the interest of justice, the impugned orders dated 09.06.2006 are set aside. Consequently, the Petitioner is permitted to submit objections to the pre-assessment notices within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Respondent shall consider the Petitioner's objections, provide a reasonable opportunity to the Petitioner and pass fresh Assessment Orders within a period of four weeks from the date of receipt of the objections. These Writ Petitions are disposed of in the above terms. There shall be no order as to costs. Consequently, the connected Writ Miscellaneous petitions are

closed. Needless to say, the Respondent in each case shall complete the fresh assessment un-influenced by any observations in this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arb

To

The Deputy Commercial Tax Officer,
Amaindakarai Assesment Circle,
Third Floor, Kuralagam Annexe,
Chennai - 600 108.

+1 cc to Mr.N.Inbarajan, Advocate Sr.No.25456
+1 cc to The Special Government Pleader, Sr.No.26001

W.P.Nos.35998 & 35999 of 2006
and
W.M.P.Nos.1, 1 of 2006

GJ(CO)
CSL/09.04.2019