IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.36642 to 36646 of 2006
and M.P.Nos. 1,1,1,1 of 2006

Tirupur Sri Senthil Cotton Mills Limited,
Rep by its Chairman & Managing Director,
Shri.A.P. Velusami
S.F. No.302. Andipalayam,
Mangalam Road, Tirupur 641 687.
..Petitioners in writ petitions 36642 to 36644/06

Mr.A.P.Velusami .. Petitioner in 36645 & 36646/06

Vs

1. The Commissioner of Central Excise (Appeals),
   6/7, ATD Street, Race Course Road,
   Coimbatore - 641 018.

2. The Additional Commissioner of Central Excise,
   6/7, ATD Street, Race Course Road,
   Coimbatore - 641 018.

3. The Deputy Commissioner of Central Excise,
   Tirupur Division, Kumaran Shopping Complex,
   1st Floor, Tirupur - 641 601.
..Respondents in all writ petitions

PRAYER in W.P.No.36642 of 2006: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writs of Mandamus, for directing the officers of the respondents and their counter parts operating within the territory of India to conduct the investigation and ascertain the identity of manufacturer who manufactured the yarn supplied by M/s.Raj Traders, Surat to the petitioner and to recover the excise duty evaded jointly and severally from the identified manufacturer and the registered dealer namely M/s.Raj Traders, Surat.

PRAYER in W.P.No.36643 of 2006 : Writ Petitions filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the impugned common Miscellaneous Order-In-Appeal No.2/2006-Cx. Dated 27.06.2006 of the 1st respondent herein and quash the same and to direct the 1st respondent to dispose the respective Appeal Nos.53/2006-Cx. and 54/2006-Cx. on merits without insisting on pre-deposit of duty and penalty and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.No.36644 of 2006: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writs of Certiorari, to call for the records of the impugned common Order-In-Appeal Nos.83 & 84/2006-Cx. Dated 01.08.2006of the 1st respondent herein quash the same and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.No.36645 of 2006: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writs of Certiorari, to call for the records of the impugned common Order-In-Appeal Nos.83 & 84/2006-Cx. Dated 01.08.2006 of the 1st respondent herein quash the same and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

PRAYER in W.P.No.36646 of 2006: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified Mandamus, to call for the records of the impugned common Order-In-Appeal No.2/2006-Cx. Dated 27.06.2006 of the 1st respondent herein quash the same and to direct the 1st respondent to dis[pose the respective Appeal Nos. 53/2006-Cx. And 54/2006-Cx. On merits without insisting on pre-deposit of duty and penalty and pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioners : Mr.Nidhin Jayachandar
(in all writ petitions)

For Respondents : Mr.T.R.Senthilkumar
(in all writ petitions)

COMMON ORDER

These writ petitions are filed questioning the actions of the Commissioner of Central Exercise on the ground that the Commissioner had felt to investigate and ascertain the identity of manufacturer, who manufacture the yarn supplied by M/s.Raj Traders at Surat.

2. The grievances of the writ petitioner is that the exercise duty had been unnecessarily imposed on the writ petitioner without conducting proper investigation by the authorities competent. The learned counsel for the writ petitioner also reiterated that no notice was issued to the

M/s.Raj Traders, who supplied yarn for manufacturing of the goods and the Commissioner had failed to conduct any investigation in this regard to ascertain the genuinity and the identity of the supplier of yarn to the writ petitioner.

3. This Court is of an opinion that all these complex facts and circumstances are to be placed before the competent authorities for the purpose of adjudication. This Court in a Writ Jurisdiction cannot appreciate the facts and circumstances as well as the disputed facts by Verifying the original records under Article 226 of the Constitution of India. A person, who is claiming rebate or any benefit under the provisions of the Central Exercise Act or under the Government of India orders is bound to establish his case before the competent authority for availing of all such benefits or rebates as applicable. Contrarily, a Writ proceedings cannot be entertained and all those disputed issues cannot be adjudicated in the present writ petition.

4. This Court is of an undoubted opinion that the writ petitioner has raised certain issues, which all are to be verified through the original files and the materials available on record. The Genuinity of the Traders, Supply of yarn to the writ petitioner and goods manufactured and supplied, which all are to be verified through the original records and by conducting inspection or investigation in the manner known to law. The Commissioner or the competent authority, who is empowered to proceed with all such issues must conduct an enquiry as prescribed and by affording reasonable opportunity to all the persons concerned.

5. This being the principles to be followed, this Court is of an opinion that the writ petitioner is at liberty to submit his explanations/objections and the documents, if any, to the original Authority Competent, who in turn shall adjudicate the matter on merits and in accordance with law and by affording reasonable opportunity to all the parties concerned, take a decision and accordingly, proceed with the matter in the manner known to law.

6. With these observations, all the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kak/kmm

To

1. The Commissioner of Central Excise (Appeals),
   6/7, ATD Street, Race Course Road,
   Coimbatore - 641 018.

2. The Additional Commissioner of Central Excise,
   6/7, ATD Street, Race Course Road,
   Coimbatore - 641 018.

3. The Deputy Commissioner of Central Excise,
   Tirupur Division, Kumaran Shopping Complex,
   1st Floor, Tirupur - 641 601.

+1cc to Mr. Nidhin Jayachandar, Advocate, S.R.No. 4114

W.P.Nos.36642 to 36646 of 2006

SSD(CO)
GN(01/03/2019)