IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.36647 of 2006 &

M.P.No.1 of 2006

M/s.Thirumoorthy Packaging,
56, Ramu Colony, K.G.Layout,
(Dhanalakshmi Theatre Backside),
Tiruppur. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Kongunagar Circle,
Tiruppur. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the proceedings of the respondent in Assessment No.2442020/2000-01 on his files, quash the proceedings in re-assessment dated 28.04.2006 passed therein.

For Petitioner : Ms.C.P.Priya for Mr.B.Raveendran

For Respondents : Mr.A.N.R.Jayaprathap for R1

O R D E R

This writ petition has been filed seeking for a Writ of Certiorari to call for the records of the proceedings of the respondent in Assessment No.2442020/2000-01 and quash the proceedings in re-assessment dated 28.04.2006.

2.The case of the Petitioner is that the Petitioner is a dealer in packing materials and traders in hangers and is an assessee of the respondent herein. The Petitioner was required to file Form-H declaration and other connected documents to avail the exemption given to the exporters. It is further stated that on receipt of notice in respect of the Original Assessment Proceedings, the Petitioner obtained necessary documents from the exporters and filed the same before the Respondent. On verifying the said documents, the Respondent stated in the Original Assessment Order dated 06.05.2002 that "the dealers have filed Form-H forms in full relating to pre-export sales which were verified and it was found that all sales were covered by Form H and they are in order and therefore eligible for exemption". Thereafter, it is stated that a notice was issued for re-assessment on 16.11.2005, which was received by the Petitioner on 18.11.2005. In the said notice, it was mentioned that the Petitioner did not submit the relevant documents such as purchase order, copies of sales invoices, Form H and Bill of Lading for the export sales. Accordingly, the Respondent proposed to revise the assessment for the Assessment Year 2000-01 under Section 16(1) of the Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act).

3.The Petitioner further stated that on receipt of the said notice, the Petitioner made an oral representation before the Respondent and informed the Respondent that the observations made in the Original Assessment Order clearly establish that all the relevant documents were already filed before the Respondent. However, the Petitioner did not file a written response to the re-assessment notice. Thereafter, the Respondent issued proceedings dated 28.04.2006 confirming the re-assessment proposal and disallowing the exemption on pre-export sales of the total value of Rs.67,76,637/-. By the said proceedings, it is further stated that apart from the levy of tax at 8%, it was also proposed to levy a penalty at 150% under Section 16(2) of the TNGST Act.

4.When the matter was taken up for hearing, the learned counsel for the Petitioner reiterated what is stated in the affidavit and submitted that all the relevant documents were enclosed with the Form-H filed at the time of original assessment. In fact, the learned counsel for the Petitioner states that this was admitted and acknowledged in the Original Assessment Order dated 06.05.2002 at page 7 of the typed set of papers filed by the Petitioner. Therefore, the burden of proof shifts to the Tax Authority and the Petitioner is not required to submit the said documents. It is further submitted that although no written response was submitted on receipt of the re-assessment notice dated 16.11.2005, an oral representation was made as stated in paragraph-4 of the affidavit in support of the writ petition. The learned counsel for the Petitioner also submitted that in the judgment of the Hon'ble Division Bench of this Court in M/S.THE TIRUPPUR EXPORTERS ASSOCIATION V. THE

STATE OF TAMILNADU in W.A.No.458 of 1997 dated 03.10.2001, 2003-04 (9) TNCTJ 213, it was held that if the dealer is not able to produce the foreign export agreement, the dealer should produce proof of actual shipment of goods.

5.The learned counsel for the Respondent submitted that it is always open to the Assessing Officer to call upon the assessee to furnish all the relevant documents along with Form-H and the judgment relied on by the learned counsel for the Petitioner does not support the case of the Petitioner. In fact, the learned counsel for the Respondent submitted that the Tiruppur Exporters Association case supports the Respondent because it was held that the filing of Form-H is not sacrosanct and it is open to the Assessing Officer to call upon the dealer to produce other documents in proof of fulfilment of conditions prescribed under Section 5(3) of the Central Sales Tax Act, 1956. In fact, the Division Bench held that the dealer should produce the proof of actual export and the actual shipment of goods i.e., Invoice number and date of the export, name of ship and Port from which exported, the date of departure of ship and copy of bill of lading.

6.The affidavit, documents on record and the oral submissions of both sides were carefully examined.

7.From the Original Assessment Order, it appears that the Petitioner submitted Form-H and also submitted other relevant documents. However, the party claiming the benefit of exemption is required to establish the entitlement to exemption by filing and producing for verification all relevant documents. Even assuming that the documents were submitted by the petitioner when the Form-H was originally filed, as correctly contended by the learned counsel for the Respondent, the Assessing Officer is entitled to call for such documents to verify the validity of the claim for exemption. However, this Court is of the view that the Petitioner should be given an opportunity to submit necessary supporting documents and establish the claim for exemption especially in view of the fact that the Petitioner did not previously submit a written representation on receipt of the reassessment notice.



8.Accordingly, this writ petition is disposed of by setting aside the impugned order dated 28.04.2006. The matter is remanded to the Respondent to carry out the reassessment after providing a reasonable opportunity to the Petitioner to submit all necessary documents to substantiate its claim for exemption. The Petitioner is directed to submit objections to the Assessing Officer with regard to the reassessment within a period of two weeks from the date of receipt of a copy of this order and, in turn, the Assessing Officer is directed to complete the reassessment within a period of four weeks thereafter. Needless to say, none of the observations made in this order shall influence the reassessment proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer,
Kongunagar Circle,
Tiruppur.

+1cc to Mr.B.Raveendran, Advocate sr.31370
+1cc to Government Pleader sr.no.3172

W.P.No.36647 of 2006 &
M.P.No.1 of 2006

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nr 08/05/2019