IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.16491 of 2009 and
M.P.Nos.1 and 2 of 2009

M/s.Chevro Elegant,
Rep. by its Partner Imitiaz Basha
No.9, Muktha Garden,
Spur Tank Road, Chetpet,
Chennai-600 031. .. Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT) III,
First Floor, Kuralagam Annexe,
Chennai 600 108.

2.The Appellate Deputy Commissioner (CT) III (FAC),
Sixth Floor, Kuralagam Annexe,
Chennai 600 108.

3.The Commercial Tax Officer,
Egmore II Assessment Circle,
Chennai.

4.The State of Tamilnadu
Rep by its Secretary,
Commercial Taxes & Registration Department,
Fort St. George,
Chennai 600 009. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in TNGST/0540739/2003-04 dated 16/06/05 and the consequential order of second respondent in AP.No.212/2006 dated 25/11/2008 and the order of the first respondent in M.P.No.25/2009 dated 12/06/09 quash the same and further direct the third respondent to grant exemption on the penultimate export sales under Section 5(3) of the Central Sales Tax Act, 1956 without insisting upon the production of form "H" as clarified by the Special Commissioner in L.Dis.Cell III/110842 dated 11/11/1986 and reiterated in clarification

Lr.No.L.Dis.Acts.Cell IV/56210 dated 11/09/2000 and second sales of finished leather.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.V.Haribabu
Additional Government Pleader (Tax)

ORDER

The petitioner challenges an order passed by the 2nd respondent dated 25.11.2008 and the consequential order of the 1st respondent dated 12.06.2009 passed under the provisions of the Tamilnadu General Sales Tax, 1959 (in short Act). The petitioner is a registered dealer and states that it is engaged in the business of export of leather since the year 1987. Though it was originally engaged in direct export, on account of stiff competition for exports, it diversified to penultimate export sales, supplying finished leather to export houses for export by them.

2.The period in question is 2003-2004. Returns of turnover were filed by the petitioner offering nil turnover to tax, since, according to the petitioner, the entire wet blue was purchased locally and sold thereafter as finished leather for export thereafter. The petitioner relied on the provisions of Section 5(3) of the Central Sales Tax Act, 1956, which deems penultimate sales as sales effected 'in the course of export' eligible for exemption.

3.The assessment was taken up for finalisation by notice dated 30.05.2005 directing the petitioner to produce various records to substantiate its claim of exemption. The petitioner responded by letter dated 02.06.2005 giving the list of purchasers. At this juncture, it is relevant to refer to a specific contention advanced by the petitioner to the effect that on account of labour unrest as well as proceedings initiated by the Employees State Insurance Corporation, the petitioner was facing several difficulties and hardship. In fact, the proceedings initiated by the Employees Insurance Corporation had resulted in a demand that the petitioner had been unable to meet, resulting in closure and sealing of its office. Its entire operations had been paralysed and the petitioner had been facing severe difficulty in furnishing the information called for by the authorities to substantiate its claim for exemption. It is in these circumstances that the assessment was completed by order dated 16.06.2005, denying the exemption sought on penultimate export sales along with penalty. The order was served only by affixture.

4. An appeal was filed by the petitioner before the appellate authority. Before the appellate authority, the index to the compilation of documents filed reveals only ledger accounts and statements, that are essentially only self-serving documents, to establish penultimate sales. No primary documents such as purchase orders, bills of lading or invoices were filed to establish the petitioners' claim. The appeal was disposed by the appellate authority recording a factual finding to the effect that no primary documents were filed by the petitioner in support of its claim.

5.In the affidavit filed in support of the present writ petition, the petitioner has stated that the counsel had appeared before the appellate authority producing a box file containing bills of lading in respect of the export transactions. Admittedly, no other document had been produced. The appellate authority is stated to have perused the documents and returned them to the counsel. There is however no reference to the documents in the impugned order.

6. The order of assessment was confirmed in appeal on the ground that there were no supporting documents filed by the petitioner, either at the original or the appellate stage.

7.The department has not chosen to file a counter controverting the averments of the petitioner in the writ petition. I thus proceed on the basis that the averments are factually correct. The petitioner at paragraph-15 of the affidavit also refers to Miscellaneous Application dated 21.05.2009 filed by it before the authority seeking a rectification of the mistake apparent on record in so far as it reiterates the production of all documents before the authority. Order dated 12.06.2009 on the Miscellaneous Application states categorically that no documents had been filed. The case of the petitioner before me is, however, that documents were produced for the perusal of the officer and, admittedly not filed. The box file containing the documents stated to have been produced by the petitioners' counsel before the officer were produced before me and the Additional Government Pleader, upon perusal thereof, confirms that some bills of lading in original, were available therein.

8.In the light of the fact that there are some documents available in support of the petitioners' claim, in the interests of justice, I set aside the impugned assessment order and allow the writ petition by way of remand. The petitioner will appear before the assessing authority on 30.09.2019 (Monday) at 10.30 a.m. and no further notice need be issued in this regard. The petitioner will produce all documents in support of its claim for penultimate sales upon consideration of which, the assessing authority shall pass a speaking order. It is made expressly clear that if the petitioner does not appear on the aforesaid date and time, the authorities will reiterate the impugned order of assessment without further reference to the assessee. The assessing authority will complete the proceedings on or before 31.10.2019.

9.This writ petition is disposed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vs

To

1.The Appellate Deputy Commissioner (CT) III,
First Floor, Kuralagam Annexe,
Chennai 600 108.

2.The Appellate Deputy Commissioner (CT) III (FAC),
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3.The Commercial Tax Officer,
Egmore II Assessment Circle,
Chennai.

4.The State of Tamilnadu
The Secretary,
Commercial Taxes & Registration Department,
Fort St. George,
Chennai 600 009.

+1cc to Mr.V.Sundareswaran, Advocate SR.No.77335

+1cc to Government Pleader SR.No.77607

W.P.No.16491 of 2009 and
M.P.Nos.1 and 2 of 2009

RK(CO)
GMY(30/09/2019)