IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.33484 of 2005

Armstrong Process
Rep. by Managing Partner
Palanisamy,
61C, Saminathapuram 2nd St.,
Anuparpalayam Post,
Tirupur - 641 652. ...Petitioner

Vs

1. The Commercial Tax Officer,
   Tirupur North Circle,
   Tirupur.

2. The Commercial Tax Officer,
   Tirupur Rural,
   Tirupur. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent and his subordinates to grant the exemption to the petitioner for his transaction pertaining to the cost of consumables like dyes and chemicals used by them in the execution of dyeing, bleaching, printing contract where there is no transfer of property involved.

For Petitioner : Mr.K.Raghuraman
No appearance

For Respondent : Mrs.Dhanamadhri
Government Advocate

ORDER

The grounds raised in the present writ petition is that the cost of consumables used in the execution of works contract, which are not transferred in the course of execution of the works contract, will come within the purview of labour charges and other like charges contemplated under Sub-Section (2) (e) of Section 3-B of Tamilnadu General Sales Tax Act 1959 and therefore, the cost of such consumables has to be excluded from the total turnover of a dealer, while calculating the taxable turnover for the purpose of levy of taxes, for which purpose, a decision of the Hon'ble Division Bench of this Court in the case of Vijayakumar Mills Ltd., reported in 100 STC 213 filed by the State of Tamilnadu, as confirmed by the Hon'ble Supreme Court of India, has been relied upon.

2. The learned Government Advocate on the other hand, opposes such a ground raised by the petitioner stating that, the Hon'ble Supreme Court in various other decisions had held that after the introduction of Section 3(B) and the amendment to the definition of "sale" thereunder, has held that the transfer of goods involved in works contract amounts to ''sale'' taxable under Section 3(B) and therefore, the entire turnover was liable to be assessed for the purpose of levy of tax.

3. In my view, if at all the petitioner is of the view that he is entitled for exemption, such a decision is within the purview and ambit of the authorities concerned and this Court will not be justified in stepping into the shoes of the authorities for adjudicating the same and taking such a decision. Nevertheless, if the petitioner is granted liberty to make an appropriate representation seeking for exemption and the authorities consequently are directed to consider the representation, the ends of justice would be secured.

4. In the light of the above observations, the petitioner is granted liberty to make an appropriate representation ventilating his grievances to the respondents and on receipt of such representation, the authorities concerned shall consider the same on its own merits and pass appropriate orders in accordance with law, as expeditiously as possible.

5. Accordingly, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

1. The Commercial Tax Officer,
Tirupur North Circle,
Tirupur.

2. The Commercial Tax Officer,
Tirupur Rural,
Tirupur.

+1cc to Special Government Pleader sr.50812
+1cc to Mr.K.Raghuraman, Advocate sr.49995

W.P.No.33484 of 2005

nr 23/07/2019