IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.7224 & 7225 of 2010
and
M.P.Nos.1, 1, 2, 2 of 2010

Anamallais Engineering (P) Ltd.,
Rep. by its Managing Director
A.Shanmuga Sundaram,
"Sakthi Farm", Coimbatore Road,
Mahalingapuram P.O.,
Pollachi - 642002. ...Petitioner in both WPs

Vs

1. The Assistant Commissioner, (CT) (FAC),
   Pollachi (East),
   Pollachi.

2. The Joint Commissioner (CT),
   Coimbatore Division,
   Coimbatore. ...Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records on the files of the second respondent in TNGST/2260836/95-96 and TNGST/2260836/96-97 dated 04.03.2010 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy
(in both WPs)   for Mr.N.Inbarajan

For Respondents: Mrs.Dhanamadhri, GA
(in both WPs)

COMMON ORDER

The orders passed on a suo motu revision under Section 32 of the Tamil Nadu General Sales Tax Act, 1959, are put under challenge in the present writ petitions.

2. One of the main claim of the petitioner is that they are entitled for exemption under Section 5(3) of the Central Sales Tax Act, insofar as it relates to bus bodies. As against the original assessment orders, the petitioner had preferred an appeal, which came to be disposed of by setting aside the original assessment orders and a direction was issued to the Assessing Authority to pass appropriate orders on the strength of the C-Form Declarations furnished by the petitioner. It is in continuation of such assessment orders being subsequently passed, the orders in the suo motu revision came to be passed. While considering the claim of the petitioner for exemption, the Revisional Authority had treated the turnover pertaining to pre-export sales of bus bodies, as local sales and held that it is liable to be taxed under Section 3(2) of the TNGST Act.

3. While the writ petitions were pending, the Hon'ble Supreme Court, in an identical issue reported in (2010) 36 VST 1 (SC) in the case of State of Karnataka vs. Azad Coach Builders Pvt. Ltd and another, had held that the dealers of bus bodies are eligible to the exemption under Section 5(3) of the CST Act, stating that when the transaction between the respondent therein and the exporter and the transaction between the exporter and foreign buyer were inextricably connected with each other, the "same goods" theory had no application.

4. In view of the subsequent decision of the Hon'ble Supreme Court, the petitioner may be now eligible for total exemption. As such, it would be appropriate that the assessment, insofar as this aspect covered by the decision of the Supreme Court, could be reconsidered by the Authorities.

5. In the light of the above observations, the impugned orders of the Joint Commissioner, dated 04.03.2010, are set aside and the matters are remanded back to the first respondent for fresh consideration. The petitioner is also granted liberty to file additional objections along with the copies of the decision relied upon for the purpose of claiming exemption. On receipt of such objections, the first respondent herein shall consider the same in the light of the observations made by the Apex Court in (2010) 36 VST 1 (SC) as well as the objections given by the petitioner and pass fresh orders in accordance with law, with a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Assistant Commissioner, (CT) (FAC),
Pollachi (East),
Pollachi.

2.The Joint Commissioner (CT),
Coimbatore Division,
Coimbatore.

+1cc to Mr.N.Inbarajan Advocate, S.R.No.67963
+1cc to the Government Pleader, S.R.No.68708

RSN(CO)
CB(25/09/2019)

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