IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.41155 of 2005
and
W.M.P.No.44194 of 2005

M/s.Victory Exports,
No.3, Puliamarathottam,
Karuvampalayam,
Tirupur. ...Petitioner

Vs

1. The Commercial Tax Officer,
   Tirupur (South).

2. The Principal Commissioner and
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600005. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to give the benefit of compromise formula of 25% payment of the total demand in respect of the turnover relating to Quota Sales applicable for the assessment year TNGST 1996-97 to all the assessees without making any distinction irrespective of cases where appeals have been preferred or not.

For Petitioner : Mr.B.Raveendran

For Respondents: Mrs.Dhanamadri, GA

O R D E R

The petitioner herein is aggrieved against the condition in the 2nd respondent's Circular dated 11.07.2002, whereby the adoption of the formula of 25% of total demand towards levy of penalty for the assessment years 1997-98 and 1998-99 was not made applicable to them, since they have preferred an appeal. Clause 4 in the aforesaid Circular imposes a ban for extension of the benefit to assessees, who have preferred an appeal.

2. The prayer sought for in the present writ petition is for a Mandamus directing the respondents to give the benefit of the compromise formula of 25% payment of the total demand in respect of the turnover relating to Quota Sales applicable for the assessment year 1996-97, without reference to the Circular.

3. In view of the Circular dated 11.07.2002, the respondents would be bound by such a Clause, restricting the assessees who have preferred appeals for adoption of the formula of 25%. Unless the concerned Clause in the Circular itself is challenged, insofar as the petitioner herein is concerned, it would be appropriate for this Court to consider the prayer sought for in the present writ petition. Nevertheless, if the petitioner is granted liberty to challenge this portion of the order, insofar as they are concerned, the ends of justice would be secured.

4. At this juncture, it is brought to the notice of this Court that the respondents have already initiated coercive steps to recover tax and penalty by issuance of an attachment notice.

5. In the light of the above observations, the Writ Petition stands disposed of, by granting liberty to petitioner to challenge Clause 4 of the Circular dated 11.07.2002, insofar as the petitioner herein is concerned, within a period of 30 days from the date of receipt of a copy of this order. Till such time, the respondents shall refrain from taking any coercive steps to recovery the tax, as well as the penalty, against the assessee herein for the assessment year 1996-97. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

hvk

To

1. The Commercial Tax Officer,
   Tirupur (South).

2. The Principal Commissioner and
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600005.

+1 CC to Mr.B.Raveendran, Advocate sr 70377
+1 CC to Spl. Govt. Pleader(T) sr 70979.

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VSNII(CO)
SP(03/10/2019)