IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.P.No.3694 of 2012
and MP.No.1 of 2012

M/s.Arun Textiles (P) Ltd.,
Represented by its Managing Director
No.80, Perumal Koil Street,
Tirupur - 641 604. .. Petitioner

Vs.

The Commercial Tax Officer,
Bazaar Circle,Tirupur. .. Respondent

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 respondent in CST No.606054/2003-04, quash the order dated 30.12.2011 passed therein and further direct the respondent to consider the issue and grant exemption in respect of export sales within the purview of Section 5(3) of the CST Act.

For Petitioner : Mr.B.Raveendran
For Respondent : Mr.M.Hariharan
Government Advocate

O R D E R

The petitioner challenges an order of assessment dated 30.12.2011 for the period 2003-2004 passed in terms of the provisions of the Central Sales Tax Act, 1959, (in short 'Act').

2.The petitioner had claim exemption in terms of Section 5 (3) of the Act on the ground that certain sales transactions constituted penultimate sales, in the course of export. The Assessing Authority issued a notice proposing to reject the claim under Section 5(3) examining various documents in respect of pre-export sales inter se the petitioner and entities such as Tvl.Loyal Textiles Mills Limited, Tvl.Relisha Exports, Tvl.Kikani Exports and Tvl.Texel Industries. According to the officer, the petitioner had not filed Form-H necessary to substantiate its claim and the documentation filed was also deficient in other respects. Upon considering the reply/objections filed by the petitioner on 04.06.2007, the transactions in respect of Loyal Textiles Mills Limited, Relisha Exports and Texel Industries were accepted and the claim under

Section 5(3) in respect of the transactions relating to Kikani Exports, Pollachi were alone rejected.

3.The Department has filed a counter dated 22.10.2018 wherein at para-5, the respondent admitting therein that 'the petitioner had filed documents in respect of one customer namely, Kikani Exports'. However, according to the officer, the supporting Form-H declaration did not match the actual export. The records were summoned wherein the Form-H relating to Kikani Exports is available on file and no discrepancy is made out on facts before me in relation to a mismatch between the Form and the transaction to which it is stated to relate. The order is also silent on the details of the mismatch alleged. That is one aspect of the matter.

4.Secondly, the Assessing Authority appears to have proceeded on the basis that the exports were effected with a delay of four months to one year from the date of penultimate sale invoice, which did not conclusively establish the actual sale for export of goods at the penultimate stage. However an order of assessment passed by the same officer in terms of the Central Sales Tax Act, for the same period dated 31.05.2011 was produced, wherein the officer states that in respect of the sales effected to the Kikani Exports the 'Form-H' and all other documents have been produced and the transactions assessed under Section 5(3) of the Act. It is thus clear to my mind that the documentation in relation to the transaction with Kikani Exports has been found to be satisfactory as far as CST assessment is concerned.

5.In the light of the above discussion, this writ petition is allowed and the impugned order, set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer, Bazaar Circle,Tirupur.

+1 cc to M/s.B.Raveendran,Advocate Sr.No. 80841
+1 cc to The Special Government Pleader Sr.No. 80797

AKM/06.12.19/2P-4C /

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