BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2019**

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.973 of 2013

M/s.Sleek Textile Industries Limited,
Represented by its Director S.Duraisamy,
1-A, Old Natham Road,
Madurai. ...Petitioner

-Vs-

1.The Special Committee,
(constituted under Section 16D of the TNGST Act)
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

2.The Deputy Commercial Tax Officer,
Chokkikulam Assessment Circle,
Madurai. ...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified, to call for the records in SCP No.1 of 2012 Ref.No.M1/23540/2008 dated 30.11.2012 on the file of the first respondent and quash the same as illegal, arbitrary and against the law.

For Petitioner : Mr.S.Karunakar

For Respondents : Mrs.T.Padmavathi Devi,
Special Government Pleader

ORDER

The petitioner challenges the order passed by the Special Committee in terms of Section 16 D of the Tamil Nadu General Sales Tax Act, 1959 (in short “Act”) dated 30.11.2012.

2.The petitioner is a dealer in Textiles ready-made Garments and important machinery. The issue relates to the applicable rate of tax at whether 20% or 12%, on the sales of the important machinary.

3.According to the petitioner, the machinery sold would be taxable at the rate of 4%, whereas, according to the respondents, it would be taxable at 20%

4.In respect of assessment year 2004-2005, an order of assessment by the respondent levying tax at 20% was subject matter of challenge in W.P.No.4113 of 2008, wherein the order of the Special Committee dated 30.01.2008 was challenged. The Bench while dismissing the writ petition granted liberty to the petitioner to file statutory appeal within 30 days. Upon compliance with the aforesaid direction, an order was passed by the Appellate Authority, the Deputy Commissioner (ST), Madurai North, Madurai, dated 07.01.2009, accepting the stand of the petitioner and concluding that the rate of tax adopted by the petitioner, at 4% was correct.

5.Admittedly, it is the same issue which arises in the instant order as well. However, in view of the fact that the learned Special Government Pleader states that first appellate order dated 07.01.2009 is pending in appeal before the Sales Tax Appellate Tribunal, it is appropriate that the petitioner be permitted to file an appeal in the present case as well and the issue be decided by the statutory authorities in a holistic fashion.

6.The petitioner is thus permitted to file an appeal challenging the assessment before the Appellate Authority within 30 days from today (i.e., 23.07.2019) and such appeal, if filed in the time frame as stipulated, shall be entertained without reference to limitation and be considered on merits and in accordance with law, within a period of four weeks from the date of filing of the appeal, after hearing the petitioner.

7.This Writ Petition is disposed of, in the above said terms. No costs.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To
1.The Special Committee,
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.
2.The Deputy Commercial Tax Officer,
Chokkikulam Assessment Circle,
Madurai.

+1 CC to M/s.SPL GP (SR-77235[F] dated 24/07/2019)
+1 CC to M/s.S.KARUNAKAR, Advocate (SR-77322[F] dated 24/07/2019)

W.P.(MD)No.973 of 2013
23.07.2019

gns/cm
JM/10.09.2019/2P/5C