IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 4952 of 2015
and
M.P. No. 1 of 2015

Rice Lake Weighing Systems India Ltd.
Represented by its Managing Director Mr.G.Guru Ganesh
A-27, SIPCOT Industrial Growth Centre,
Oragadam,
Sriperumpudur Taluk - 602 105. ... Petitioner

-vs-

The Assistant Commissioner (CT)
Chrompet Assessment Circle,
No.117, Station Road,
Radha Nagar,
Chennai - 600 044. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Assessment Order in CST/984497/2008-09 dated 23.01.2015, passed by Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar

For Respondent : Mrs. Dhanamadhiri
(Government Advocate)

O R D E R
(through video conference)

Heard Mr. Joseph Prabakar, Learned Counsel for the Petitioner and Mrs. Dhanamadhiri, Learned Government Advocate for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in CST/984497/2008-09 dated 23.01.2015 in which the tax liability of the Petitioner under the Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act' for short) for the year 2008-2009 had been assessed by the Respondent.

3. The only grievance ventilated by the Petitioner in respect of the impugned order is that the claim for exemption for sales to exporter for the turnover of Rs. 53,71,900/- has been disallowed inspite of submitting Form-H on the ground that the invoice copies and other documents, such as, export purchase order, export invoice, bill of lading and shipping

bills were not filed so as to verify the genuineness of those transactions. In this regard, it is contended that the obligation to produce documents as evidence of export goods was not required in view of the amendment made with effect from 14.07.2005 in Rule 12(10)(a) of the Central Sales Tax (Registration and Turnover) Rules, 1957. In other words, it is contended that mere production of Form-H would suffice and the Respondent did not have any authority to deny the benefits of exemption based on Form-H for the reason that supporting export documents had not been produced.

4. The same question had come up before the Division Bench of this Court in Tiruppur Exporters Association -vs- State of Tamil Nadu (Order dated 03.10.2001 in W.A. No. 458 of 1997), where it was observed as follows:-

> "12. After anxious consideration of the matter, we hold that if the dealer is not required to produce any evidence in proof of the export, it may lead to large scale evasion of tax it is open to the exporter to give a certificate in Form H enabling the dealers, who have not even sold the goods, to claim under Section 5(3) of the Central Sales Tax Act, 1956. Though the exporter may be liable to be proceeded with for filing the bogus Form H the large scale avoidance of tax by adopting such a dubious device cannot be ruled out. We are of the opinion that the Government has realised the difficulties of the dealers and the Taxation Rationalisation Committee has also realised the difficulties of the dealers and the Government of Tamil Nadu has also issued a Government order stating that if the dealer is not able to produce the foreign export agreement or the foreign export order, the dealer should produce the proof of actual export and the actual shipment of goods i.e., Invoice number and date of the export, name of ship and Port from which exported, the date of departure of ship and copy of Bill of landing. Apart from the production of those documents if the assessing officer still feels that the dealers should produce the export agreement or order to fully satisfy himslef whether the statutory pre-conditions for claiming exemption are complied with, he must so inform the dealer, to enable him to file an application to summon the documents from the Export House concerned or from the assessing officer who has jurisdiction over the Export House and obtain a copy of the foreign order or the agreement either from the Export House or from the assessing officer having jurisdiction over the Export House. We make it clear that the assessing officer has the full power in Form H, as filing of Form H is not sacrosanct, but if the dealer is able to produce any other documents in proof of the conditions prescribed under Section 5(3) of the Central Sales Tax Act, 1956, it will be open

to the assessing officer to accept the same. If the assessing officer still is not satisfied, it will be open to him to insist on the dealer to file necessary application for summoning the documents as it is not expected that the assessing officer should call for the documents on his own when the dealer claims exemption under Section 5(3) of the Central Sales Tax Act, 1956 and it is for the dealer to produce necessary documents by filing necessary application with the requisite fee for summoning the documents from the Export House or the assessing officer having jurisdiction over the Export House. We are of the view that the learned Single Judge was perfectly right in holding that it is not open to this Court to interfere with the assessment proceedings and it is open to the parties to rely on any statutory Rule, Regulation or order and proceed with the assessment in accordance with law. However, where the assessing officer has clearly indicated his mind that the dealer must produce the foreign agreement or the foreign order to claim exemption in Section 5(3) of Central Sales Tax Act, 1956 and if the dealer is not able to produce the same, the dealer may not get the exemption under Section 5(3) of the Central Sales Tax Act, 1956, as the production of the foreign agreement or order seems to be, in the opinion of the assessing officer, the only mode of proof to claim exemption under section 5(3) of the Act.

13. The Supreme Court in the case of Commissioner of Sales Tax -vs- Indra Industries (248 ITR, 338) has held that the circulars issued by the Commissioner of Sales Tax would be binding on the said authority though it is not binding on the Court. We are of the view that the circular dated 11.11.1986 has been issued to soften the rigor of section 5(3) of the Central Sales Tax Act, 1956.

14. Accordingly, we hold that for claiming exemption of tax by the dealer under section 5(3) of the Central Sales Tax Act, 1956, the mere filing of Form-H alone is not sufficient and it is open to the assessing officer to conduct a detailed enquiry to find out whether the particulars contained in Form H are true or not."

The said view has been followed by this Court in Thirumoorthy Packaging -vs- Deputy Commercial Tax Officer (Order 01.04.2019 in W.P. No. 36647 of 2006).

5. It is, no doubt, true that the aforesaid decisions had been rendered in respect of the export transactions that had taken place prior to 14.07.2005 when Rule 12(10)(a) of the Central Sales Tax (Registration and Turnover) Rules, 1957, was amended by deleting the words "along with the evidence of export of such goods". However, it is not possible to infer from the said amendment that it precludes the assessing

authority from calling upon the assessee to substantiate the claim made relying on the forms produced. In this context, it is again necessary to make reference to the ruling of the Division Bench of this Court in Tiruppur Exporters Association -vs- State of Tamil Nadu (Order dated 03.10.2001 in W.A. No. 458 of 1997) in which it has been highlighted that apart from the Central Sales Tax (Registration and Turnover) Rules, 1957, there is a specific requirement in Central Sales Tax (Tamil Nadu) Rules, 1957, for ascertaining the genuineness of the export transactions, and the relevant passages are extracted below:-

> "9. Under Rule 12(10) of the Central (Registration and Turnover) Rules, if a dealer claims exemption under section 5(3) of Central Sales Tax Act, 1956, he is required to furnish the assessing authority, the Form H duly filled and signed by the exporter along with the evidence of export of such goods. Form H is the certificate of export which is required to be filed by the penultimate dealer and the said form should be duly filled an signed by the exporter. Under Form H of the relevant rules, the exporter no doubt certifies about the foreign purchase agreement or order of the foreign buyer in relation to such export and when the penultimate dealer files the Form H, it is no doubt open to the assessing authority to conduct an enquiry and find out whether the particulars stated in Form H are true or not. We hold that the filing of Form H is not conclusive and it is open to the assessing officer to deal wither the assessment proceedings in respect of the dealer claiming exemption under section 5(3) of Central Sales Tax Act, 1956 by conducting an enquiry so as to find out the genuineness of the claim made in Form H and it is open to him to insist on the dealer to prove the contents of the documents furnished.
>
> 10. Form-H of the Central Sales Tax Act, 1956, the certificate of export is, no doubt, issued on the basis of the authority found in Rule 12(10) of the said Rules. Form-8 of the Central Sales Tax (Tamil Nadu) Rules, 1957 is the Register of declaration forms required to be maintained by the dealer of export goods under rule 10(5) of the Central Sales-tax (Tamil Nadu) Rules and the said Register should contain the receipts and issues of the forms and the dealer is also required to maintain the Register by making entires such as, number and date of order, description of goods, value of the goods, seller's cash memo, etc. Though it is not very clear whether other States have framed similar Rule, even in the absence of any such statutory requirement, the Export Houses are required to maintain such a Register containing all relevant particulars which are found in Form-8 of the Central Sales Tax (Tamil

Nadu) Rules."
Moreover, it requires to be noticed here that there was also an amendment in Section 5 of the CST Act introducing clause (4) with effect from 13.05.2005, which reads as follows:-

> " (4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority."

Viewed from this perspective, it is not possible to accept the contentions raised by the Petitioner that submission of supporting export documents is not necessary.

6. At the same time, in order to ensure that the Petitioner is not deprived of the exemption, if he possess supporting documents to prove the genuineness of Form-H submitted by him, it would subserve the interests of justice to provide another opportunity to him to produce the same along with an application for rectification to the Respondent by 31.01.2021. In that event, the Respondent shall re-assess the liability of the Petitioner by conducting enquiry affording opportunity of personal hearing and pass reasoned order in modification of the impugned order to the Petitioner under written acknowledgment. It is needless to clarify here that if the Petitioner does not avail that benefit within the said date, the impugned order shall remain undisturbed and the Respondents shall not be precluded from recovering that amount due from the Petitioner under the impugned order in the manner recognized by law.

In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dm
To

The Assistant Commissioner (CT)
Chrompet Assessment Circle,
No.117, Station Road,
Radha Nagar,
Chennai - 600 044.

Copy to

Rice Lake Weighing Systems India Ltd.
Represented by its Managing Director Mr.G.Guru Ganesh
A-27, SIPCOT Industrial Growth Centre,
Oragadam,
Sriperumpudur Taluk - 602 105.

+1 cc to Spl Government Pleader taxes Sr.No. 38051

W.P. No. 4952 of 2015

A.Sk(23.12.2020)