IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12218 & 12219 of 2015
and
M.P.No.1 of 2015

Elgi Equipments Limited
(Represented by its Head-Legal & Secretarial
Shyam Vasudevan,
Trichy Road,
Singanallur,
Coimbatore – 641 005. ...Petitioner in both W.Ps

Vs

The Deputy Commissioner (CT)
Fast Track Assessment Circle – 1,
Commercial Tax Office
Coimbatore – 641 018. ... Respondents in both W.Ps

Prayer in W.P.No.12218 of 2015 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the files of the respondent herein in CST.No.299456/2011-12, dated 30.01.2015 as revised by the respondent in CST.No.299456/2011-12, dated 27.02.2015, quashing the same in so far as it relates to the levy of tax at a rate in excess of 4% for the period up to 11.07.2011 and in excess of 5% for the period after 12.07.2011 on a turnover of Rs.4,96,81,241/-.

Prayer in W.P.No.12219 of 2015 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in CST.No.299456/2011-12 dated 10.04.2015, quashing the same, while directing the respondent herein to re-dispose the application dated 06.04.2015 filed by the petitioners under Section 84 of the TNVAT Act, 2006.

For Petitioner : Mr.K.A.Parthasarathy
For Mr.N.Inbarajan
[in both W.Ps]

For Respondents : Mr.V.Nanmaran
Government Advocate
[in both W.Ps]

COMMON ORDER

The writ petitions are filed, challenging the assessment orders passed.

2. Admittedly, an appeal against the order lies before the Appellate Joint Commissioner of Commercial Taxes, Coimbatore, within thirty days of receipt of the orders.

3. It is brought to the notice of this Court that the Hon'ble Division Bench of this Court considered the validity of Section 2(11) of Tamil Nadu Value Added Tax Act, 2006 and upheld the provision and passed the following orders made in W.P.Nos.37604 & 37605 of 2007 & etc., batch dated 05.04.2016 and the relevant paragraph 82 is extracted hereunder:

> “82. Therefore in fine, all the writ petitions are disposed of to the following effect:
>
> (i) The challenge to the validity of Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006, is rejected and the prayer of the writ petitioners for declaration that Section 2(11) is ultra vires and unconstitutional, is dismissed.
>
> (ii) Since many of the writ petitions challenge not only the validity of Section 2(11), but also the individual orders of assessment, we give a time limit of 30 days for the assessees to file statutory appeals. The period of 30 days shall commence from the date of issue of a copy of this order.
>
> (iii) Until the expiration of a period of 30 days from the date of issue of a copy of this order, the respondents shall not take coercive steps.
>
> (iv) In respect of petitioners who deal with capital goods used in the State, but who are not extended the benefit of the concessional rate of tax, on account of a lack of proper understanding of the definition of the expression 'manufacture' appearing in Section 2(27), the appellate authority shall take note of the observations that we have made in paragraphs 74 to 77, while deciding their appeals.
>
> (v) While dealing with the appeals of the

petitioners, the Appellate Authorities shall note of the second proviso to Section 42(3). All the writ petitions are disposed of to the above effect. There shall be no order as to costs. Consequently, all connected M.Ps. are closed."

4. While upholding the validity of Section 2(11) of the TNVAT Act, the Hon'ble Division Bench rejected the prayers sought for by the writ petitioner for declaration. However, liberty was granted to prefer an appeal against the individual orders of assessment and the time limit of 30 days granted by the original authority was extended and to be reckoned from the date of issue of copy of that order. Thus, the petitioner in the present writ petitions are also entitled to prefer an appeal against the order of assessment by extending the benefit granted by the Hon'ble Division Bench in respect of the time limit prescribed for appeal.

5. Accordingly, the petitioner is permitted to prefer an appeal against the impugned orders of assessment within a period of 30 days from the date of receipt of a copy of this order and if any such appeal is filed by the petitioner before the Appellate Authority, the appellate authority is directed to condone the delay and entertain the appeal and dispose of the same on merits and in accordance with law and by affording opportunity to the writ petitioner as expeditiously as possible.

6. With these directions, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kak

Note: Registry is directed to return the original impugned orders to the learned counsel on record for the writ petitioner.

To

The Deputy Commissioner (CT),
Fast Track Assessment Circle - 1,
Commercial Tax Office,
Coimbatore - 641 018.

Copy to:-

The Section Officer,
ER Section,
High Court, Madras.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.36079

W.P.Nos.12218 & 12219 of 2015

SRA(CO)
CT/18/08/2021