IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40385 of 2006
and
M.P.No.1 of 2006

Tvl.Thirupathi Innovative Casting Pvt.Ltd.,
Rep.by its director, R.Sethumadavan,
S/o.Rajaratnam, No.99, Medawalkam Tank Road,
Kilpauk, Chennai - 10. ...Petitioner

Vs

1. The State of Tamil Nadu,
   Rep.by its Secretary,
   Department of Commercial Taxes and
   Religious Endowment,
   Fort St.George,
   Chennai - 1.

2. The Commissioner of Commercial Taxes,
   Ezilagam, Chepauk,
   Chennai - 6.

3. Commercial Tax Officer,
   Peddu Naickanpet (South),
   Chennai - 1. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the provisions of the Tamil Nadu Tax on Luxuries Act, 1981 as amended by Act 24 of 2002 as ultra vires the provisions of Constitution of India.

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel
assisted by Mr.S.Ramesh Kumar

For Respondents: Mr.V.Nanmaran
Government Advocate

O R D E R

The petitioner is carrying on the business of Jewellary, under the provision of the Tamil Nadu Luxury Tax Act 1981. The petitioner filed return for the turnover, as the goods were included to be taxable under the Act.

2.The petitioner challenged the Constitutional validity of the Tamil Nadu Luxury Tax Act, 1981, as goods could not be a luxury for the imposition of tax. The Hon'ble Supreme Court, in the case of M/s.Godfrey Philips India Ltd., vs, State of U.P. [(2005)2 SCC 515], has been pleased to lay down, that no luxury tax can be imposed on the goods.

3.This court, in the case of Tvl.M.S.P.Sethuraman & Co., represented by its Partner vs. The State of Tamil Nadu, rep. by Secretary to Government, Department of Commercial Taxes & Religious Endowments, Fort St. George, Chennai- 600 009 in W.P. (MD)No.1789 of 2007 and connected cases, decided on 01.12.2009, was pleased to lay down as under:-

> "6.A perusal of the order would go to show that the scope of the order of the Hon'ble Supreme Court striking down the Amendment Act has not been fully understood. When once the Amendment Act is struck down by the Supreme Court, it should be property understood to mean that the amendment was never, in force in the Statute Book. But, under the wrong impression, these impugned orders have been passed as though the amendment was in force was for a particular period viz., between 1.7.2002 and 28.12.2004. For these reasons, I am of the considered opinion that the impugned orders are liable to be set aside."

4.The case of the petitioner is squarely covered by the judgment of this court referred to above.

5.Consequently, the writ petition is allowed. The assessment order, imposing luxury tax for the period in dispute is ordered to be quashed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary,
   The State of Tamil Nadu,
   Department of Commercial Taxes and
   Religious Endowment,
   Fort St.George, Chennai - 1.

2. The Commissioner of Commercial Taxes,
   Ezilagam, Chepauk,
   Chennai - 6.

3. Commercial Tax Officer,
   Peddu Naickanpet (South),
   Chennai - 1.

+1cc to Mr.S.Rameshkumar, Advocate, S.R.No.39940
+1cc to the Special Government Pleader, (Taxes) S.R.No.40536

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VBM(CO)
RGA(02/09/2021)