IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.NOS.28750 & 28751 OF 2007

M/s.Tirupur Arora Textile Process (P) Ltd.,
Rep. by its Director Sushil Arora,
699/2, Muthusamy & Bros Industrial Complex,
Kamaraj Road,
Tirupur - 641 604. ... Petitioner in both Petitions

.Vs.

1. The Secretary,
   The Tamil Nadu Sales Tax Appellate Tribunal,
   Additional Bench,
   Coimbatore.

2. The Commercial Tax Officer,
   Tirupur (Rural),
   Tirupur. ... Respondents in both Petitions

PRAYER IN W.P.NO.28750 OF 2007:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first Respondent in its proceedings in C.T.SA.No.283/00 dated 29.01.2007 and quash the same as illegal and contrary to the principles of assessment.

PRAYER IN W.P.NO.28751 OF 2007:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first Respondent in its proceedings in C.T.A.No.125/00 dated 29.01.2007 and quash the same as illegal and contrary to the principles of assessment.

For Petitioner : Mrs.R.Hemalatha
(in both Petitions)

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Tax)
(in both Petitions)

COMMON ORDER

[Order of the Court was made by R. MAHADEVAN, J.]

Heard Mrs.R.Hemalatha, learned counsel for the Petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) appearing for the respondents and also perused the materials placed before this court.

2. These Writ Petitions have been filed by the petitioner/ assessee assailing the order dated 29.01.2007 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in CTSA No.283 of 2000 and CTA No.125 of 2000 respectively.

3. The brief facts of the case are as follows:

i) The petitioner is engaged in the business of manufacture and export of hosiery garments. For the assessment year 1999-2000, they had duly filed its return disclosing the total and taxable turnover. While so, the petitioner's place of business was inspected by the Enforcement Wing Officials on 06.03.1999, during the course of which, it was revealed that the petitioner availed tax concession at the reduced rate of Central Sales Tax at 4% by issuing Form 'C' declaration for certain items, which were not covered in the Form 'B' registration certificate issued by the second respondent to them. Hence, the second respondent issued a show cause notice calling upon the petitioner to explain as to why penalty should not be levied under Section 10 (A) of the CST Act, 1956, for the commission of offence under Section 10(b) of the CST Act, to which, the petitioner submitted its reply on 18.01.2000 and 24.02.2000. Without considering the same, the second respondent passed the assessment order on 25.02.2000, besides levied penalty at the rate of 150% to the tune of Rs.87,08,474/-.

ii) Challenging the order of the 2nd Respondent, the petitioner preferred appeal before the Appellate Assistant Commissioner (CT), Pollachi, who partly allowed the appeal and modified the penalty levied by the assessing officer.

iii) Aggrieved by the order of the appellate authority, the petitioner and the State preferred respective appeals in CTA No.125 of 2000 and CTSA No.283 of 2000 before the Tribunal. By a common order dated 29.01.2007, the penalty levied by the assessing officer was modified by restricting to 100%, instead of 150% and accordingly, the petitioner's appeal was dismissed and the State's appeal was modified. Therefore, the petitioner is before this court with these two writ petitions.

4. At the outset, it is to be noted that the petitioner admitted its liability to pay tax for the purchases made in respect of goods that were not covered under Form 'B' registration certificate issued by the second respondent. They disputed only the quantum of penalty levied by the authorities below. Therefore, this court is inclined to look into the orders of the authorities below to that extent alone.

5. It is seen that the assessing officer, after inspection and verification of records, found that the petitioner claimed concessional rate of CST at 4% by issuance of form 'C' declaration in respect of certain items that were not covered under the certificate of registration in form 'B' issued to them by the second respondent and thereby committed the offence as contemplated under section 10(b), warranting penalty under section 10(A) of the CST Act, 1956.

6. It was contended by the petitioner that all the products, which were not covered in Form 'B' certificate, were either used as raw materials or components/parts in the machinery or made use of in the process of manufacture of hosiery goods and hence, the same were within the permissible/ admissible items as a class of goods referred to under section 8(3)(b) of the CST Act, 1956 and hence, there could not be any levy of penalty on the inter-state purchase of the said items. It was further stated that the petitioner sent several communications seeking amendment of their Form 'B' certificate to include those items and the same were pending without any progress. Therefore, there was no false representation as alleged by the department and the concept of 'mens rea' would not arise for levy of penalty under section 10(A) of the CST Act. Being dissatisfied with the explanation submitted, the assessing officer ultimately completed the assessment, levying penalty at the rate of 150% of the tax due.

7. The Appellate Authority had dealt with the case in an elaborate manner and reduced the penalty by order dated 28.03.2000, which was challenged by the petitioner before the Tribunal on the ground that there was no mens rea involved and the goods were purchased under the bonafide impression that were covered under the Form B registration certificate and hence, the

penalty imposed on the petitioner has to be reduced by a minimum of Rs.1,000/-.

8. The Tribunal after detailed analysis, came to the conclusion that there was mensrea on the part of the petitioner and hence, they were liable to pay penalty. At the same time, the Tribunal observed that the penalty levied by the assessing officer, was too excessive and therefore, the same was modified by restricting to 100% and not 150%.

9. Considering the fact that the petitioner made applications seeking amendment of the Form B registration certificate, which disclosed that they had made inter-state purchases on the bonafide impression that the disputed items would have been included in the Form B registration certificate issued by the second respondent; and subsequently, they had admitted their liability to pay tax in respect of the disputed items, this court is of the opinion that the levy of penalty has to be modified by restricting it to 50%, instead of 100% as done by the Tribunal. Accordingly, the order of the Tribunal, which is impugned herein, is modified to that extent alone.

10. With the aforesaid modification, both the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sai/dhk

To

1. The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench,
Coimbatore.

2. The Commercial Tax Officer,
Tirupur (Rural),
Tirupur.

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.8260
+1cc to the Special Government Pleader (Taxes), S.R.No.8381

W.P.NOS.28750 & 28751 OF 2007

KK(CO)
PBS/28/02/2022