IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.37789 and 37790 of 2004

Tvl.Asher Textiles Limited,
(Now known as Prime Textiles Ltd)
154, Avinashi Road,
Gandhinagar Post,
Tirupur. ... Petitioner in both W.P.'s

-vs-

1. The Tamilnadu Sales Tax Appellate Tribunal, (Additional Bench), represented by its Secretary, Balasundaram Road, Commercial Taxes Complex, Coimbatore - 18.

2. The Appellate Assistant Commissioner (CT), Commercial Taxes Building, Pollachi.

3. The Commercial Tax Officer, Commercial Taxes Building, Tirupur (North) ... Respondents

Prayer in W.P.No.37789 of 2004: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the impugned proceedings of the first respondent Tribunal in CTMP No.47/2002 in CTA No.501/1993 dt. 02.09.2004 and to quash the proceedings dt. 02.09.2004.

Prayer in W.P.No.37790 of 2004: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned proceedings of the first respondent herein in C.T.A.No.501/1993 on its file, quash the order dated 31.10.1994 made therein and further direct the respondents to grant exemption on pre-export sales under Section 5 (3) of the CST Act, 1956 to the Petitioner herein.

For Petitioner (in both W.P.'s)	:	Mr.Karuppiah
For Respondents (in both W.P.'s)	:	Mr.V.Prashanth Kiran Government Advocate (Taxes)

****

COMMON ORDER

S.VAIDYANATHAN.,J
and
C.SARAVANAN.,J

Since the issue pertaining to both these Writ Petitions are one and the same, they are taken up together and disposed of by way of common order.

2. W.P.No.37789 of 2004 has been filed to challenging the proceedings of the 1st Respondent Tribunal in CTMP No.47/2002 in CTA No.501/1993 dt. 02.09.2004, in dismissing the Petitioner's application filed under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 (in short 'the TNGST Act'), filed for rectification of the order of the Tribunal dated 31.10.1994.

3.W.P.No.37790 of 2004 has been filed challenging the proceedings of the 1st Respondent herein dated 31.10.1994 made in C.T.A.No.501/1993 and to further direct the Respondents to grant exemption on pre-export sales under Section 5 (3) of the Central Sales Tax Act, 1956(in short 'CST Act') to the Petitioner herein

4. The dispute pertains to Assessment Year 1991-1992. The case of the Petitioner is that the Petitioner is a manufacturer of cotton yarn and the Petitioner effected pre-export sales to a merchant exporter under various commercial invoices raised and therefore these same were exempted in terms of Section 5 (3) of the CST Act, 1956. The assessment was completed by disallowing the aforesaid exemption. It is the further case of the Petitioner that the merchant exporter to whom sales were effected had received telephonic purchase orders and on the basis of which the merchant exporters entered into an agreement for sale of goods with the Petitioner. It is further stated that to meet the

urgency of need of the foreign customer the merchant exporter immediately placed orders on the Petitioner and subsequently the oral order was later confirmed in writing by the foreign customer to the merchant exporter. It is further stated that the petitioner dispatched the goods for the purpose of export and it was exported as it is and therefore, the Petitioner was entitled for the aforesaid exemption.

5. The learned counsel for the Petitioner would submit that the Tribunal has though gone through the columns in the statement has yet misconstrued the details under "proof of shipment" and that column containing Central Excise Gate Pass Nos. and AR4A Nos. representing the date of export, whereas they are only dates of clearance from the factory and a specific reference was made to Rule 9 of the Central Excise Rules, 1944.

6. The facts on record would indicate that the merchant exporter had placed Purchase Orders on the Petitioner on 18.02.1991. The date of order on the merchant exporter is 23.02.1991, which *prima facie* makes it clear that the sales invoices raised by the Petitioner are after the Purchase Order. The invoices raised by the petitioner for the supply/sales to the merchant exporter are starting from 03.04.1991 and ending on 30.03.1992 except for invoices nos. 1,4,6,11,17,37,39,41 and 42, wherein the contract date proceed exporter order date. The contention of the petitioner with regard to other invoices were accepted . Though the Petitioner may have had a justifiable case for

rectification of the order passed by the Tribunal affirming the view of the Assessing Officer rejecting the claim of the Petitioner for exemption under Section 5 (3) of the CST Act, 1956, the fact remains that application for rectification of the order was filed beyond the statutory period of limitation prescribed under Section 55 of the TNGST Act, 1959. Section 55 reads as under:

> ***"55. Power to rectify any error apparent on the face of the record**:-*
>
> *(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, <u>at any time within five years</u> from the date of any order passed by it, rectify any error apparent on the face of the record:*
>
> *Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him a reasonable opportunity of being heard.*
>
> *(2) Where such rectification has the effect of reducing an assessment of penalty, the assessing authority shall make any refund, which may be due to the dealer.*
>
> *(3) Where any such rectification has the effect of enhancing an assessment of penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.*
>
> *(3-A) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject-matter of an appeal or revision.*
>
> *(4) The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this Section as they apply to the order in respect of which such order of rectification has been made."*

7. The application for ratification was filed by the Petitioner on 21.12.2001, which is beyond 5 years. There is statutory bar for filing the application under Section 55 of the TNGST Act. Though the Appellate Tribunal not considered the same, we are of the view that the order passed by the Tribunal rejecting the application for rectification under Section 55 of the TNGST Act requires no interference. Therefore, W.P.No.37789 of 2004 is liable to be dismissed. The Challenge to order dated 31.10.1994 in C.T.A.No.501 of 1993 is liable to be dismissed on account of laches. Therefore, W.P.No.37790 of 2004 is also liable to be dismissed.

Accordingly both the Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.,] [C.S.N., J]
23.09.2022

Index: Yes / No
Internet: Yes / No
arr

To

1. The Tamilnadu Sales Tax Appellate Tribunal,
   (Additional Bench), represented by its Secretary,
   Balasundaram Road,
   Commercial Taxes Complex,
   Coimbatore - 18.

2. The Appellate Assistant Commissioner (CT),
   Commercial Taxes Building, Pollachi.

3. The Commercial Tax Officer,
   Commercial Taxes Building,
   Tirupur (North)

S.VAIDYANATHAN, J.
and
C.SARAVANAN,J.

arr

W.P.Nos.37789 and 37790 of 2004

21.09.2022