

(2010) 08 MAD CK 0434

Madras High Court

Case No: Writ Petition No. 48829 of 2006 and M.P. No's. 1 and 2 of 2006

V. Win Garments

APPELLANT

Vs

Additional Deputy Commercial
Tax Officer, Central I Assessment
Circle, Tirupur

RESPONDENT

Date of Decision: Aug. 18, 2010

Citation: (2011) 42 VST 330

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: R. Senniappan, for the Appellant; J. Ganesan, Government Advocate (Tax), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ms. K.B.K. Vasuki, J.

On consent, the writ petition is taken up for final hearing.

2. The writ petition is filed against the order dated February 24, 2007 made by the respondent in CST. 314770/94-95 and to quash the same, thereby, disallowing the claim for exemption made by the petitioner for the prior and post export transactions.

3. The petitioner/assessee is the manufacturer of hosiery goods situated at Tirupur and filed tax return for the year 1994-95 along with form H, thereby seeking exemption of tax liability for the transaction effected by the petitioner outside India. The petitioner has along with his return filed form H and has also produced some other relevant documents such as bill of lading to prove the transaction in question. It is not in dispute that the petitioner did not produce the copy of the agreement entered into by the petitioner with the foreign buyers. That being so, the assessing authority has negated the claim of the petitioner for want of production of such agreement and assessed the transaction to tax and the validity of such order is now

challenged in this writ petition.

4. According to the learned counsel for the petitioner, though the petitioner has not produced the agreement with foreign buyers, the petitioner has filed form H and other documents in support of his claim and the order of the assessing authority without insisting those documents and by considering the production of agreement with foreign buyers, is unfair and arbitrary and is bad in law. This court finds considerable force in such argument advanced on the side of the petitioner. What is required on the part of the petitioner is to prove the factum of the transaction and once he is able to do so with sufficient and satisfactory documents, the value of the same is exempted from tax liability and no rule lays it mandatory to produce the agreement with the foreign buyers. That being so, the failure on the part of the assessing authority to consider the documents already produced by the petitioner and to pass appropriate orders in the light of the same amounts to non-application of mind and the impugned order, which is the outcome of the same cannot be legally allowed to stand. The learned counsel for the petitioner has also in the course of hearing, produced the copy of the order passed by our High Court dated August 30, 2004 in W.P. No. 24354 of 2004 made in *Rolls Appliances (P) Limited v. Commercial Tax Officer* and order dated April 5, 2004 in W.A. No. 4 of 2003 in *South India Hosiery Manufacturers Association v. State of Tamil Nadu*. The perusal of the orders reveal that identical issue was raised in both the matters before the honourable Division Bench and the learned single judge and our High Court has in both the cases considering the submission made by the petitioners therein, set aside the identical impugned orders and remanded the matter to the assessing authority with liberty given to the petitioners therein, to produce sufficient materials to convince the assessing authority about the genuineness of the claim made by the petitioner. In my considered view, the petitioner herein, is also entitled to get such opportunity as such the impugned order passed by the appellate authority is hence to enable the petitioners to avail such opportunity, set aside.

5. In the result, the impugned order dated February 24, 1997 passed by the respondent is set aside and the matter is remanded back to the respondent, with further direction issued to the respondent to decide the matter afresh in the light of form H and other documents already available on record and fresh document if any produced on the side of the petitioner and after giving him an opportunity of being heard.

6. With this observation, the writ petition is disposed of. The connected miscellaneous petitions are closed. No costs.