IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

W.A.Nos.1281 to 1287 of 2015

M/s A.V.Thomas Leather & Allied
Products Private Limited
rep.by H.M.A.Hussain-Authorised Signatory
No.22, Marshalls Road
Egmore
Chennai 600 008 .. Appellant in all the writ appeals

-vs-

The Assistant Commissioner (CT)
Egmore Assessment Circle
No.88, Mayor Ramanathan Road
Chetpet
Chennai 60 031 .. Respondent in all the writ appeals

Appeals under Clause 15 of the Letters Patent against the common order dated 8.6.2015 made in W.P.Nos.13711 to 13717 of 2015.

WP.Nos.13711 to 13717 of 2015:Petitions filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in CST No.23756/2007-08 and quash the proceedings dt 26.3.2015 as against the provisions of Section 10-A of the CST Act contrary to the settled law laid down by the Full Bench of this Honourable Court in the case of State of Tamil Nadu reported in (2006) 148 STC 256 (Mad) and in gross violation of the principles of natural justice.

For Appellant :: Mr.P.Rajkumar

For Respondent:: Mr.V.Haribabu
Additional Government Pleader (Taxes)

JUDGMENT

(Judgment of the Court was made by V.RAMASUBRAMANIAN, J.)

All these appeals arise out of a common order passed by a learned Judge, dismissing the writ petitions filed by the appellant, challenging the orders imposing penalty under Section 10-A of the Central Sales Tax Act.

2. Heard Mr.P.Rajkumar, learned counsel for the appellant and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) appearing for the respondent.

3. The appellant is a manufacturer of finished leather, leather products and shoes. In the course of business, the appellant effected local and inter-State purchases of raw materials and other materials for use in the manufacture of finished product. They also purchased tools and accessories for use in repairing the machineries available in the factory. Naturally they also purchased packing materials for use.

4. On the basis of an inspection carried out by the enforcement wing officials of the Department of Commercial Taxes, on 4.12.2013, the assessing officer issued seven notices, all dated 18.7.2014, for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14, holding that the appellant purchased packing materials, tools & spares etc., from inter-State dealers, without those articles being included in the certificate of registration. However, the appellant issued 'C' forms to the sellers, enabling them to avail the concessional rate of tax.

5. The appellant submitted separate replies in respect of each assessment year on 6.8.2014, contending that insofar as the exports are concerned, they made purchases against the issue of Form-H and that insofar as the other items are concerned, such as packing materials, they were included in the certificate of registration.

6. However, rejecting the reply made by the appellant, the assessing officer passed separate orders, all dated 26.3.2015, confirming the proposals for the levy of penalty under Section 10-A of the Central Sales Tax Act.

7. Aggrieved by those orders, the appellant filed seven writ petitions in W.P.Nos.13711 to 13717 of 2015. But these writ petitions were dismissed by a learned Judge, at the stage of admission, on 8.6.2015, on the ground that the appellant has an effective alternative remedy of appeal provided by the statute. Therefore the appellant is before us.

8. There can be no dispute about the fact that this Court will not normally entertain writ petitions against orders, in respect of which an effective, alternative remedy is provided by the statute. But this rule is not without exceptions. In cases where there is gross violation of the principles of natural justice, and in cases where the very jurisdiction of the officer is questioned, this Court is not powerless to interfere with the orders so passed. Therefore these types of cases have to be examined with reference to the nature of the grievance of the assessees/dealers and the extent to which they are able to convince about the validity of such grievance.

9. Insofar as the cases on hand are concerned, the main objection of the appellant to the proposals issued under Section 10-A were (i) that the exports were covered by Form-H and (ii) that the purchase of packing materials, tools, spares etc., were covered by the certificate of registration issued to them.

10. As a matter of fact, the appellant relied upon a decision of the Full Bench of this Court in State of Tamil Nadu v. Nu-Tread Tyres, (2006) 148 STC (Mad)(FB), wherein this Court held that even in respect of the goods which are not covered by the certificate of registration, the benefit cannot be denied.

11. But, however, without going into the said question, we passed an order on 10.9.2015, when the writ appeals came up for admission, directing the learned Additional Government Pleader to verify and find out from the original certificate of registration, as to whether the certificate of registration did really include these items. Today the learned Additional Government Pleader produced the xerox copies of the certificate of registration issued to the appellant. The certificate of registration shows that the wooden strips, wooden insert cap, grey board, rose board, PVC sheeting, stamping foil etc., are also included in the certificate of registration issued to the appellant. Therefore, straight-away, the very basis on which the proposals were made under Section 10-A, is found to be shallow.

12. As a matter of fact, the learned Judge agreed with the contention of the appellant that the issue is covered by the decision of the Full Bench of this Court. The assessing officer, instead of following the decision of the Full Bench of this Court, has chosen to follow the decision of the Guwahati High Court. It is a fundamental principle that the assessing officers are bound by the rulings of the jurisdictional Courts. Since the assessing officer chose to follow the decision of the Guwahati High Court, but chose to ignore the decision of the Full Bench of this Court which is binding on her, this is a case which calls for interference.

13. Even the exports covered by Form-H, have not been taken note of by the assessing officer. They are also packing materials, which were covered against Form-H. Therefore we are of the considered view that the orders passed on 26.3.2015, are clearly erroneous. It is not required of an appellate authority to find out that they are erroneous. Therefore the writ appeals are allowed, the common order of the learned Judge is set aside and the orders imposing penalty are also set aside. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Egmore Assessment Circle
No.88, Mayor Ramanathan Road
Chetpet
Chennai 60 031

+1 cc to Mr.P.Rajkumar, Advocate sr.55222
+1 cc to Special Government Pleader (Taxes) sr.55761

W.A.Nos.1281 to 1287 of 2015

aa27/10/2015