IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.9.2015

CORAM :

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

Writ Appeal No.1324 of 2015
&
M.P.No.1 of 2015

M/s.S.A.Abdul Azeez Co.,
rep.by its Partner,
Erode ...Appellant/Petitioner

Vs

The Assistant Commissioner (CT),
Periya Agraharam Assessment Circle,
Erode. ...Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 20.7.2015 made in W.P.No.21546 of 2015.

W.P.No. 21546 of 2015:

Petition filed under Article 226 of the Constitution of India, seeking a Writ of Certiorari, to call for the records of the respondent in TIN No. 33303075360/2012-13 and quash the order dated 08.06.2015 passed therein in so far as it relates to the issue of levy of purchase tax on alleged purchase turnover omission and reversal of Input Tax Credit on alleged manufacturing loss.

For Appellant : Mr.R.L.Ramani,
SC for Mr.P.V.Sudhakar

For Respondent : Mr.S.Kanmani Annamalai,
AGP(T)

Judgment was delivered by V.RAMASUBRAMANIAN,J

The assessee has come up with the above writ appeal challenging an order of the learned Judge dismissing their writ petition as against an order of assessment on the ground of availability of alternative remedy.

2. Heard Mr.R.L.Ramani, learned Senior Counsel appearing for the appellant. Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent.

3. The appellant reported a total and taxable turnover of Rs.23,48,18,308/- and Rs.1,56,46,091/- respectively for the year 2012-13 in the monthly Form I returns filed. They were accepted and deemed to have been assessed under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006.

4. Subsequently, the information furnished in Form I with Form WW was examined in detail and a few discrepancies were allegedly found. Therefore, the respondent issued a notice calling upon the appellant to explain the differences and discrepancies. Thereafter, a best of judgment assessment under Section 22(4) was passed, after issuing a proposal for the revision of assessment.

5. Without challenging the revised order of assessment dated 29.12.2014 by way of an appeal, the assessee filed an application under Section 22(6) on 29.4.2015. Accepting the contention of the assessee in respect of three out of five items of dispute (there were 8 items of dispute in total), the respondent granted relief. But, in respect of two items namely (i) purchase of raw skins turn over omission and (ii) manufacturing loss, the Assessing Officer refused to relieve the assessee. Therefore, the assessee filed a writ petition, but the same dismissed by the learned Judge on the ground that the appellant has an alternative remedy of appeal. Hence, the assessee is on appeal.

6. It is true that this Court will be normally hesitant to entertain a writ petition as against an order of assessment, when an effective alternative remedy of appeal is available under the statute. But, this rule is not without exceptions.

7. In the case on hand, the decision taken by the Assessing Officer in respect of manufacturing loss is clearly contrary to the judgment of this Court in M/s.Interfit Techno Products Ltd. Vs. Principal Secretary [(2015) 81 VST 389]. This Court has already held

that there cannot be a uniform rate in respect of invisible loss in relation to all types of manufacturing processes. But, by the impugned order, a uniform rate has been applied to the invisible loss. Therefore, at least on this ground, an appellate remedy is futile for the appellant.

8. In so far as the only other issue is concerned, the claim of the appellant is that the purchase of raw hides and skins was for the purpose of export and hence, the purchase is exempt from payment of purchase tax. The Assessing Officer refused to grant relief on the only ground that the appellant did not produce the books of accounts or any other proof in support of their claim.

9. But, the case of the appellant is that after six months of filing an application under Section 22(6), the impugned order came to be passed without even calling upon the appellant to produce the books of accounts. Therefore, the appellant pitches their claim on the ground of violation of reasonable opportunity to defend their case.

10. However, it is contended by Mr.S.Kanmani Annamalai, learned Additional Government Pleader that nothing prevented the appellant from filing the copies of VAT note, purchase etc., along with the application under Section 22(6). Therefore, the learned Additional Government Pleader submitted that even if the appellant deserves an opportunity, they cannot get away without making any payment.

11. We have carefully considered the above submissions.

12. As seen from the best of judgment order as well as the impugned order, there were 8 discrepancies pointed out. Out of them, the appellant/ assessee has chosen to admit their liability in respect of three items. In respect of three other items, the Assessing Officer granted relief in favour of the assessee. Hence, what was left behind was only two issues out of the total of six.

13. Even out of these two issues, one issue is covered in favour of the assessee. This is with respect to manufacturing loss.

14. As a consequence, the dispute has now boiled down only to the question of purchase of raw skins turnover omission. The appellant claims that they have the books of accounts and proof. Therefore, we are of the considered view that by granting one opportunity to the appellant to produce the records before the Assessing Officer upon the payment of some portion of the tax demanded, ends of justice will be met.

15. Accordingly, the writ appeal is allowed, the order of the learned Judge is set aside and the order of the Assessing Officer is directed to be kept on hold. The appellant is permitted to produce proof as well as the books of accounts before the Assessing Officer, in so far as the issue relating to purchase tax is concerned. The assessee shall produce the books and records within two weeks. Upon production of the books and records, the Assessing Officer shall go through them, give an opportunity to the appellant and thereafter pass an order as to whether the order dated 8.6.2015 requires any modification and if so, the Assessing Officer shall pass a modified order. In the meantime, the appellant shall deposit a sum of Rs.30 lakhs (Rupees thirty lakhs only) without prejudice to the rights of both parties, with the respondent. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Periya Agraharam Assessment Circle,
Erode

1 CC to Mr.B.Raveendran, Advocate SR.No. 50451

1 CC to the Spl.Government Pleader, SR.No. 50435

W.A.No.1324 of 2015
and M.P.No.1 of 2015

GP (CO)
PSI (29.09.2015)