IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.06.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.13319 of 2015
and
M.P.No.1 of 2015

United India Shoe Uppers Pvt. Ltd.
Rep. by its Director Mr.Mohamed Ahmed,
No.29, College Road, Nungambakkam,
Chennai - 600 006. ...Petitioner

.. Vs ..

The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Taluk Office Building,
Spurtank Road,
Chennai 600 031. ...Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the order dated 05.03.2015 in TIN No.33260461523 /2012-13 passed by the respondent and quash the same.

For Petitioner : Ms.Aparna Nandakmar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

ORDER

This Writ Petition has been filed by the United India Shoe Uppers Pvt. Ltd., Represented by its Director Mr.Mohamed Ahmed, challenging the proceedings of the Assistant Commissioner (CT), Nungambakkam Assessment Circle in TIN No.33260461523/2012-13, dated 05.03.2015, which is appealable order before the Appellate Deputy Commissioner (CT), Chennai Central.

2. The grievance of the petitioner is that their claim has been completely and unreasonably rejected by the respondent without looking into the available Ledger produced by the petitioner and the detailed objections filed giving clear picture on two important issues. Firstly, the detailed objections filed in response of the notice that the entire receipts of Rs.3,32,13,240.00 being towards pure labour work do not come within the purview of turnover and not liable to tax, hence, the levy of tax to be dropped. That has been completely overlooked. With regard to the second issue that the registered dealer, who collected tax from the petitioner, if not paid the same to the Department, then the respondent/Assessing Authority is not entitled to reverse the ITC as they are bound to proceed only against the registered dealer. That legal aspect having been settled by this Court also has been completely overlooked. With regard to the non-filing of the Shop Ledger Extract for the year 2012-2013, the same has been wrongly found by the respondent.

3. Learned counsel appearing for the petitioner would submit that regarding Job Work Receipts, they have filed a letter from Tvl. ECTC to the effect that the dealers have done job work to their company. In addition, they have also produced a ledger containing the following documents:-

i. Month wise job work charges received from the job awarders.

ii. Copy of the Job Work Invoices from the Job Work done.

iii. Details of Service Tax paid for the year 2012-13.

iv. Quantity of materials received, used for job work, and quantity of materials returned to the job awarders.

v. Copy of the Form JJ used for the movement of materials received.

vi. Copy of the Form JJ used for the return of the finished goods to the Job Awarders.

Therefore, in Paragraph No.17 of the impugned order, it was pleaded that the respondent ought not to have dealt against the petitioner that the dealers have not filed the aforesaid documents. More particularly, when they are, first of all, available in the ledger produced before the respondent and secondly, the respondent having not sought for the aforesaid documents and had it been so, the petitioner could have brought the notice of the respondent about the availability of all the documents. But, in the present case, the respondent, erroneously passed the order resulting huge hardship grave inconvenience and prejudice to the petitioner. On this basis prayed for interference.

4. Learned counsel appearing for the petitioner would further submit that the documents sought for by the petitioner which are completely lost sight of by the respondent or readily available even tomorrow the same can be produced, if one more opportunity is granted to pass a fresh order. On this basis, prayed for allowing of this writ petition on the ground that the respondent has completely failed to apply his mind.

5. A counter affidavit has been filed by the respondent. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) also finds it difficult to support the impugned order, when the respondent, in paragraph No.17 of the impugned order, has given a finding that the dealers have not filed the job work ledgers extract for the year 2012-13. He should have given an opportunity to the petitioner to produce all the aforesaid documents. In the original notice issued by the respondent, it is not so any right whatsoever on the production of any one of the documents. Therefore, it is not justification on the part of the respondent to give a finding against the petitioner that the dealers have not done job work to their company and they have not filed the job work ledger extract for the year 2012-13. He has also submitted that the ledger produced by the petitioner was available with the respondent. A mere perusal of the ledger would have thrown more light. Therefore, he prayed that the matter has to be remanded back to the Assessing Authority to re-consider the issue.

6. This Court is also able to see that the respondent, in the impugned order, has not specifically dealt with as to why the entire receipts of Rs.3,32,13,240.00 towards pure labour work do come within the purview of turnover and liable to be taxed. Secondly, there is no finding whatsoever given by the respondent with regard to the second issue viz., when the registered dealers have collected tax from the petitioner, the non-payment of the same by them cannot give any basis for the Assessing Officer to proceed against the petitioner.

7. Therefore, for all these reasons, this Court is of the view that the respondent being a quasi judicial officer has failed to discharge his judicious mind by giving a speaking order on the aforesaid issues. Therefore, the impugned order is set aside and the Writ Petition is allowed and the matter is remanded back to the respondent. The respondent is hereby directed to provide a personal hearing to the petitioner so that it will be easy for both

sides to approach the issue on merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jrl

To

The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Taluk Office Building,
Spurtank Road,
Chennai 600 031.

W.P.No.13319 of 2015

VSN (CO)
PSI (01.07.2015)