IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29914 of 2015
and M.P.No.1 of 2015

Sundaram Fasteners Limited,
(Represented by its CFO and
Company Secretary)
V.G.Jaganathan
No.98A, Dr.Radha Krishnan Salai,
Chennai - 600 004. ... Petitioner

vs.

The Deputy Commissioner (CT)I,
Large Tax payers Unit,
No.34 (Old No.123), 'Dugar Towers',
Marshal Road, Egmore, ... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, calling for the records on the file of the respondent herein in TIN/33050741047/2010-11 dated24.08.2015, quashing the same insofar as it pertains to the levy of tax on an amount of Rs.2,20,00,000/- being amoutn received by the petitioner towards release of their share as co-owners in an aircraft under Memorandum of Agreement dated 15.03.2011.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and perused the materials placed on record including the counter affidavit.

2.The petitioner, who is a Public Limited Company incorporated under the Companies Act, is an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). In this writ petition, the petitioner has challenged the order of assessment under the provisions of the TNVAT Act for the year 2010-2011 only with regard to the findings rendered on the issue relating to Sale of Aircraft (Asset). The respondent issued a show cause notice to the petitioner dated 30.04.2013 stating that on verification of the Balance Sheet, it was found that the petitioner have sold an Aircraft and taking note of the fact that the aircraft was jointly owned by three people and the petitioner having sold the aircraft which was valued at Rs.6,60,00,000/-, taking 1/3rd share of the petitioner tax was demanded at 12.5% along with penalty at 150%. On receipt of the show cause notice, the petitioner submitted their objections dated 13.03.2013, wherein the petitioner pointed out that the aircraft was owned jointly by three persons for the purpose of their business in terms of the joint venture agreement executed between the parties on 10.09.2003. It was further stated that as per the memorandum of agreement dated 15.03.2011 between the parties for exit of the petitioner from the joint venture agreed to transfer, assign and relinquish of their share of 33.33% aggregating to 66 2/3% in the joint venture to M/s.Madras Cements Ltd., with equal shares. Thus the petitioner sought to contend that it was not a sale but a case of relinquishment or release of the share in the joint venture and therefore cannot be taxed.

3.Along with the objections, the petitioner had also enclosed the copies of the relevant documents. The said stand was reiterated by the petitioner in their second objection dated 15.07.2014. The respondent while finalizing the assessment did not go into the factual aspects but on a reading of the finding in paragraph 8 of the impugned order would show that it is in fact verbatim repetition of the proposal in the show cause notice. Thus, the respondent before concluding it is a sale, should have examined the scope of the joint venture agreement between the petitioner and the other entities for testing the correctness of the submission of the petitioner that it is only a release of relinquishment of share in the joint venture and not a sale.

4.The petitioner's case is that the transaction will not fall within the scope of the expression 'sale' as defined in Section 2(33) of the TNVAT Act. Thus, the factual averments set out by the petitioner has to be examined by the respondent. For doing so, it is necessary that the joint venture agreement dated 10.09.2003, memorandum of agreement dated 15.03.2011 and other related documents should be gone into to interpret the intentions of the parties. Having failed to do so would render the findings recorded by the respondent in the impugned order as not tenable. In the counter affidavit, the grounds raised by the petitioner having not been met rather the counter affidavit is the re-presentation of the impugned assessment order.

5.For all the above reasons, the writ petition is allowed and the findings rendered by the respondent in paragraph 8 of the impugned order relating to Sale of Aircraft (Asset) is set aside and the matter is remanded to the respondent for fresh consideration, who shall take note of the observations made this order and re-do the assessment under the said head in accordance with law. From the observations made in the impugned order as well as the averments as set out in the counter affidavit, it appears that the entire proceedings is on account of the report submitted by the Enforcement Wing. While re-considering the matter in terms of the above direction, it is needless to state that the Assessing Officer being an independent statutory authority should not be solely guided by the findings of the Enforcement Wing and should independently apply his mind to the facts and contentions raised by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Deputy Commissioner (CT),
Large Tax payers Unit,
No.34 (Old No.123), 'Dugar Towers',
Marshal Road, Egmore,Chennai.

+1 cc to Mr.N.Inbarajan,advocate,sr.64152

+1 cc to Spl.GovtPleader,sr.64333

ss(co)
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