IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.35505 of 2015
& M.P.1/2015

M/s.Gem Leathers,
rep. by its Partner C.Subramanian,
435/A, Krishnasami Street,
Sipcot Ranipet,
Vellore District. ..Petitioner

Vs

The Assistant Commissioner (CT)
Ranipet (Sipcot) Assessment Circle,
Ranipet, Vellore District. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ by calling for the records of the Respondent in his proceedings in TIN No.33034362456/2013-14 dated 30.06.2015 and quash the same as illegal.

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

ORDER

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Advocate appearing for the respondent.

2. The present writ petition has been filed for quashing the proceedings of the respondent dated 30.06.2015.

3. The petitioner who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax Act, 1956 (CST Act), deals in Hides and Skins. The order impugned in this

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writ petition is an order of assessment dated 30.06.2015, for the assessment year 2013-2014. The petitioner was issued with a notice to the respondent on 20.11.2015, after a perusal of the petitioner's return for the relevant year and three issues were pointed out in the said notice viz; (i) there is a difference in the turnover reported ; (ii) there is a mismatch on cross verification of the dealers annexures; and (iii) the documents relating to claim for exemption are to be produced.

4. The petitioner submitted a detailed objection dated 03.06.2014, thereupon the respondent completed the assessment and while doing so, the explanation given by the petitioner with regard to the difference in the turnover was accepted assets and the total turnover proposed to be assessed to tax at Rs.1,69,46,036 at 5% was dropped. However, erroneously while completing the assessment, once again the respondent has included the said amount in the total and taxable turnover. The aforesaid error is being apparent on the face of the records, has to be set right.

5. With regard to mismatch, as alleged in the show cause notice dated 20.11.2014, the petitioner submitted their objections by furnishing the details of the purchases effected and also giving the name of the selling dealer and they requested the respondent to furnish the invoice details of the concerned seller who has not reported the turnover and on furnishing the details they were ready and willing to produce the original invoices, to prove that they have paid the tax. However, without considering the same, the respondent completed the assessment by saying that the petitioner has not produced relevant evidence. This finding is also erroneous, since the petitioner should have been given an opportunity to produce the necessary records after furnishing the details called for. Therefore, the findings on this issue has to be set aside and remanded for fresh consideration.

6. With regard to the other issue relating to the claim for exemption, the petitioner enclosed along with the claim for exemption against export sale documents viz., bill of lading, bank payment details, customs details. They also stated that there was a mistake when they entered sale value and requested for reconciliation. However, the respondent erroneously held that the petitioner has not filed Form-H declaration which would arise only if the transaction is a sale within the scope sub-section (3) of section 5 of the Central Sales Tax Act. The case of the petitioner is that it is not a deemed export sale, but, a direct export sale. Therefore, the respondent was not justified in insisting on Form-H declaration, without examining the export documents. Therefore, the matter requires to be re-

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considered.

7. In the light of the above, the Writ Petition is allowed to the extent indicated below:

(i) The addition of purchase turnover assessed to tax suppressed at Rs.1,69,46,036/- is set aside;

(ii) the respondent is directed to furnish the actual invoice details and the concerned sellers who are said to have not reported the taxable turnover; and on furnishing those details, the petitioner is entitled to submit their objections, within two weeks thereafter, and on receipt of the objections, the respondent shall redo the assessment; and

(iii) With regard to the demand for Form-H is concerned, the same is set aside and the respondent is directed to verify the export documents produced by the petitioner and on being satisfied, complete the assessment in accordance with law.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

KP/RPA

To

The Assistant Commissioner (CT)
Ranipet (Sipcot) Assessment Circle,
Ranipet, Vellore District.

+1 CC to Special Govt., Pleader (Taxes), Sr.No.52414
+1 CC to M/s. S. Ramanathan, Advocate Sr.No.52355

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NR (CO)
MD : 06/10/2016

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