In the High Court of Judicature at Madras

Dated: 22.12.2016

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.44089 of 2016
& WMP No.37901 of 2016

M/s.SMZ Leathers
represented by its Proprietor

.... Petitioner

Vs.

Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vellore District.

.... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33364642750/2008-09 dated 28.01.2016 and quash the order passed therein as illegal and levy of tax is double taxation of the same commodity and to provide an opportunity of personal hearing.

For Petitioner : Mr.C.Baktha Siromoni
For Respondents : Mr.S.Kanmani Annamalai, AGP

O R D E R

1. Issue Notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondent.

2. With the consent of counsel for parties, the Writ Petition is taken up for hearing and final disposal.

3. The brief facts, which are required to be noticed, for disposal of the present Writ Petition, are as follows:

3.1. The petitioner is a registered dealer on the file of the respondent in accordance with the provisions of Tamil Nadu Value Added Tax Act, 2006 (in short the "2006 Act").

3.2. The petitioner deals in raw leather. It is the petitioner's case that he had regularly filed his monthly returns and paid taxes for the Assessment Year (AY) in issue i.e.AY 2008-09.

3.3. The record shows that the petitioner's case was picked up for reassessment, whereupon, notice was issued to the petitioner on 29.04.2014. The petitioner, evidently, filed his objections vide letter dated 26.05.2014. It is the petitioner's case (and it was also his objection) that no purchase tax is leviable, in view of the provisions of Section 12 of the 2006 Act. The objection being related to chargeability to tax.

3.4. The impugned order shows that, while, the respondent has noticed the objection of the petitioner in this behalf, he proceeded to give a short shrift to the objection by holding that he should first pay the tax and thereafter, claim adjustment or take refund.

3.5. The reasoning, albeit, flawed, is reflected in the following part of the impugned order:

> " ...... As per the provisions of Tamilnadu Value Added Tax, 2006, a purchase to be attracted u/s12, if the goods purchased from unregistered dealers are:
>
> a) Consumed or the dealer uses such goods in or for the manufacture of other goods for sale or otherwise.
>
> b) The dealer disposes of such goods in any manner other than by way of sale in the State.
>
> The products we purchase are sold as it is and the tax collected by us on sale of raw skins are paid to the Government every month by e filing our return of income regularly. In view of the above, we have not declared our purchases in se.12 we are maintaining our books of accounts and recording the purchases regularly. Since the purchases do not attract tax u/s12, we have not declared it in Sec.12 purchases.
>
> In view of the above, it is requested to your good self to drop the proposed proposal to tax purchases u/s 12.
>
> The dealer reply have been go through and examine the said contention of the dealer was wrong.
>
> Any unregistered dealer purchases u/s12 the tax will be liable on the purchase of goods and then only. The dealer took adjustment or took refund, in this circumstances the reply of the dealer is over ruled and the proposal is confirmed and order passed accordingly for the year 2008-2009 as follows.
>
> Hence u/s 12 purchase turnover determined Rs.29498569/- @ 4%
>
> Tax due Rs.11,79,943/-
> Paid Rs. Nil
> ----------------------------
> Balance Rs.11,79,943/-
> ------------------------------

A demand Notice in Form "O" is issued."
(Emphasis is mine)

4. To be noted, quite clearly, the respondent has not dealt with the objection raised by the petitioner.

4.1. The case of the petitioner is that he is a trader in raw leather. The petitioner asserts that he neither consumes nor uses the raw leather in or for the manufacture of other goods for sale or otherwise. The petitioner also asserts that he had sold the raw leather within the State after paying local tax. It is, therefore, the contention of the petitioner that no sale has been carried out outside the State.

5. Therefore, according to the petitioner, none of the circumstances, as contemplated under Clause (a), (b) and (c) of Section 12 of the 2006 Act, are applicable in his case. As a matter of fact, the condition, prescribed under Clause (d) of Section 12 of the 2006 Act, was also not applicable to the petitioner's case, as it relates to a situation, where the subject goods are installed or used in a factory for manufacture of other goods.

6. In these circumstances, clearly, the respondent has misdirected himself. Therefore, I have no hesitation in setting aside the order. It is ordered accordingly. The respondent, however, will be at liberty reassess the petitioner, after following the prescribed procedure, as stipulated in law.

7. The Writ Petition is disposed in the aforesaid terms, leaving the parties to bear their own costs. Resultantly, connected Miscellaneous Petition stands closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sl

To
Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vellore District.

+1cc to Mr.C.Bakthasiromoni, Advocate sr.74877
+1cc to The Special Government Pleader sr.75013

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pvs(co)
ss(23/01/2017)