IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.10750 of 2006
and
W.P.M.P. No. 12183 of 2006

M/s.Jai Gowtham Textiles (P) Ltd.
Rep by its Director Mr.S.Ramasamy
S.F.No.304/2, Manickapuram Road
Palladam, Coimbatore. ... Petitioner

Vs.

The Deputy Commercial Tax Officer
Palladam, Coimbatore. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in its proceedings in TNGST No.6242073/2002-03 dated 26.09.2005 and quash the same as illegal and contrary to the principles of assessment.

For Petitioner .. Mrs.R.Hemalatha

For Respondent .. Mr.K.Venkatesh
Government Advocate

O R D E R

The learned counsel on either side submits that the issue involved in this writ petition is that in respect of the same issue, a decision has been rendered in Writ Petition No.16472 of 2005, the operative portion of which reads as follows:

"6.Before I test the correctness of the impugned order, it may be necessary to take note of the legal position with regard to the taxability at the point of sales and what would be the response of all the purchasing dealers, who claim that they had paid taxes while purchasing the goods. In the case of Lakshmi Steel Traders V. Board of Revenue (Commercial Taxes) reported in [1991]Volume 82 STC 409, this issue was considered and the Hon'ble Division Bench pointed out that

> "if an assessee establishes that a particular turnover represents second sales of goods taxable at the point of sale at the first sale and the first sale was by a dealer liable to pay tax, then the Revenue cannot deny the exemption on the second sales merely on the ground that the registration certificate of the first seller was cancelled during the assessment year in question or immediately before the purchase by the assessee, namely, the second seller. We must, however, add that the assessee (second seller) must establish that the first sale was a taxable sale and whether the tax had been paid by the first seller or not is not the concern of the assessee (second seller). We would like to add that the Revenue cannot take advantage of the fact of cancellation of the registration certificate of the first seller either on his application or otherwise, without further investigation as to whether the bills issued by such dealers were real or bogus bill. In the event of the Revenue establishing that the bills produced by the assessee (second seller) are bogus and were not really issued by the first settler, then the assessee cannot claim exemption on the alleged second sales. In that situation, the assessee's sale will be the first sale."

7.If the above decision is applied to the facts of the present case, the duty cast upon the petitioner who claims himself to be a second seller is to establish that a first sale was a taxable sale. It may not be necessary for the petitioner to establish whether the tax has been paid by the first seller or not. Similarly, the respondent cannot take advantage of the cancellation of the registration certificate of the first seller, without investigating as to whether the bills issued by the such dealers were real or bogus bills.

8.In the instant case, the respondent has rejected the petitioner's objection on the ground that the alleged first sellers was not dealers in yarn. Simultaneously, the respondent has stated that the said dealer's registration certificate has been cancelled. Therefore, the respondent was bound to investigate as to whether the bills issued by those 21 dealers were real or bogus one and if the respondent is able to establish that the bills produced by the petitioner are bogus and are not really issued by the first seller, then, the petitioner cannot claim exemption on the alleged second sales.

9.However, such enquiry was not done by the respondent in this matter, though, there appears to be some material available with the respondent to state that the 21 dealers, whose names have been mentioned as bogus are not dealers in cotton yarn and hence, the purchase bills by the dealers are bogus one. In other words, the respondent seeks to contend that the receipts produced by the petitioner are bogus. However, such findings cannot be rendered by the respondent without thoroughly investigating the material. Thus, the reasons assigned in the assessment order are insufficient to hold that the petitioner is liable to pay the tax and penalty.

9.For the above reasons, the writ petition is allowed and the impugned order is quashed and the matter is remanded back to the respondent to further conduct investigation of the matters and if any material is established then it is open to the respondent to proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed."

2.Following the aforesaid decision, the writ petition is allowed on the same lines. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer
Palladam, Coimbatore.

+1cc to the Government Pleader, S.R.No. 79695
+1cc to Mr. Advocate, S.R.No. 79861

W.P. No.10750 of 2006

TR(04/12/2017)