IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2017

Coram:-

The Hon'ble Mr. Justice T. S. Sivagnanam

W.P.Nos. 38734 & 38735 of 2015
and
M.P.Nos. 1 and 1 of 2015

M/s. Hizaz Leathers Private Ltd.,
rep. by its Director M.Md. Muneer,
17/7, Ist Floor Uthucatan Street,
Periamet, Chennai-3.

...Petitioner in both the WPs

Versus

The Commercial Tax Officer,
Vepery Assessment Circle,
10, Palaniappa Towers,
Greams Road, Chennai-6.

...Respondent in both the WPs

Prayer in W.P.Nos. 38734 & 38735 of 2015:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of writ of certiorari calling for the records of the respondent in his proceedings in TIN 33280422421/2011-12 and TIN 33280422421/2010-11 dated 23.10.2015 and 28.10.2015 respectively and quash the same as illegal.

For petitioner : Mr. S. Ramanathan

For respondent : Mr. K. Venkatesh,
Government Advocate

C O M M O N O R D E R

Heard Mr. S. Ramanathan, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate appearing on behalf of the respondent. Since the issue involved and the parties in these Writ Petitions are one and the same, with the consent of the learned counsel on either side, both the Writ Petitions are taken up together for final disposal.

2. The petitioner, who is a registered dealer, on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax, Act 2006 (hereinafter, referred to as TNVAT Act) and Central Sales Tax Act, 1956 is before this Court, challenging the orders of assessment for the years 2010-11 and 2011-12 respectively. Though the assessment for both the years have been completed under several heads, the petitioner has challenged the impugned order only with regard to two issues, viz., Job Work Charges and ii) Liability under Section 13 of the Act.

3. The factual position is identical for both the assessment years, except, for the fact that the persons, who had engaged the service of the petitioner are different, and they are also registered dealers under the provisions of the TNVAT Act.

4. While issuing Revision Notices, dated 14.09.2015, the proposal made by the respondent for the year 2010-11, is to the following effect:-

> " 10. Verification of the balance sheet for the year 2010-11 revealed that they have incurred expenses on job work for manufacture of goods to the tune of Rs.26,37,599/-. But they have not maintained and produced the relevant records for the job work done, viz., Material outward register for quantity wise raw materials issued and inward register for receipt of manufactured garments and finished leather. In the absence of these records, it is not possible to examine the use of their own materials involved in the execution of job work. Hence it is proposed to assess the turnover of Rs. 26,37,599/- as purchase under Section 12 and to assess the same to tax at 4%.
>
> As per the fixed assets schedule annexed to the balance sheet, the assesses have effected construction of shed during the year 2010-11 and the contract value thereon worked out to Rs. 32,64,344/-. They have also effected addition of furniture and fitting to the tune of Rs.1,76,658/- during this year. They have not produced the relevant in this regard and the details of TDS recovered or non liability certificate in Form S filed by the contractor. In the

> absence of these details, it is proposed to treat the above turnover as work done by unregistered individuals and to levy and collect tax as TDS liable for recovery under Section 12 of TNVAT Act at 2%."

5. The proposal made by the respondent for the year 2011-12 is to the following effect :-

> 7. Verification of the balance sheet for the year 2011-12 revealed that they have incurred expenses on job work for manufacture of goods to the tune of Rs.68,52,932/-. But they have not maintained and produced the relevant records for the job work done, viz., Material outward register for quantity wise raw materials issued and inward register for receipt of manufactured garments and finished leather. In the absence of these records, it is not possible to examine the use of their own materials involved in the execution of job work. Hence it is proposed to assess the turnover of Rs. 68,52,932/- as purchase under Section 12 and to assess the same to tax at 5%.
>
> 8. As per the fixed assets schedule annexed to the balance sheet, the assesses have effected construction of shed during the year 2011-12 and the contract value thereon worked out to Rs.19,82,591/-. They have not produced the relevant details of works contract, if any, TIN number and name of the contractor in Form S filed by the contractor. In the absence of these details, it is proposed to treat the above turnover as work done by unregistered individuals and to levy and collect tax as TDS liable for recovery under Section 12 of TNVAT Act at 2% on civil work and at 5% on furniture and fixtures."

6. On receipt of the said proposal, the petitioner submitted the objections for both the years (2010-11 and 2011-12) which are mentioned herein below as A and B :-

'A'

" Job Work Charges paid Rs.26,37,599/- :

This includes payment of wages Rs. 9,88,020/- and payment for the supply of labour to the tune of Rs. 16,49,579/-, total Rs. 26,37,599/- There are no transfer of materials involved in these transactions. Copies of ledger accounts with invoices raised for the supply of man power by M/s. Ideal Finishing Agency Private Ltd., are enclosed herewith for an immediate reference.

Fixed Assets:

We have made some alterations on the tannery shed, at our own supervision without engaging any contractors. The materials were produced in our account and used for the construction. Copy of Ledger account along with major bills used for the improvement are enclosed herewith for your perusal. Therefore deduction of TDS will not arise for the facts of the case."

'B'

Job Work Charges paid Rs. 68,52,932/-:

The job work payments are well supported by invoices and Dcs maintained at the unit and these represents only machinery charges without involving any transfer of goods. However, the copies of invoices are submitted herewith for your immediate reference. These turnover has been duly reflected in the dealers at other end.

Fixed Assets:

We have made some alterations on the tannery shed, at our own supervision without engaging any contractors. The materials were produced in our account and used for the construction. Copy of Ledger account along with major bills used for the improvement are enclosed herewith for your perusal. Therefore deduction of TDS will not arise for the facts of the case."

7. To test the correctness of the above objections, the primordial requirement is to afford an opportunity of personal hearing to the petitioner. If personal hearing had been afforded by the respondent, then, he would have

been in a position to examine the correctness of the stand taken by the petitioner, in their objections that there is no transfer of goods involved in the transactions. However, the respondent, while completing the assessment for the year 2011-12, proceeded on a totally different line and stated that the petitioner has not produced any 'affidavit', as noticed above. In the proposal made in the show cause notice, dated 14.09.2015, there was no direction issued to the petitioner to file an affidavit. When there is no such direction, the respondent could not have been proceeded on the basis that, since there is no affidavit filed, the stand taken by the petitioner cannot be believed. So far as the assessment order for the year 2010-11 is concerned, the respondent has admitted that the petitioner has produced copy of the ledger accounts and copies of some labour bills and proceeded to arrive at a conclusion as to what was the nature of the job work. In fact, what has be done by the respondent is to interpret the documents produced by the petitioner. However, such interpretation was not put to the petitioner, as there was no opportunity of personal hearing. Similarly, with regard to the liability under Section 13 of the Act, the respondent has accepted that the petitioner has filed a copy of the ledger accounts, and he had given certain interpretation, which according to the petitioner, is wholly incorrect and contrary to the facts of the case.

8. Thus, if the opportunity of personal hearing had been granted to the petitioner, then, the entire material could have been thrashed out before the respondent without giving room for any presumptions or assumptions. In the counter affidavit filed by the respondent, it is admitted that the petitioner has purchased materials in their name. If such is the position, then, the issue would be as to whether the findings recorded by the respondent, as noticed above, are correct. In the counter affidavit, it has been reiterated that the petitioner has not filed any proof of records about the number of labours supplied, hours worked, place of work, attendance register maintained for labourers, etc., However, in the proposal made in the show cause notice, dated 14.09.2015, there was no mention for production of such records. Therefore, an opportunity could have been granted to the petitioner to substantiate their stand taken in the objections to the show cause notices. So far as levy of penalty is concerned, it is admitted by the respondent even in the revision notice, dated 14.09.2015, that the entire details have been culled out from the balance sheet and other documents produced by the petitioner . In these circumstances, the question of levy of penalty under Section 27 (3) and (4) of the Act does not arise and accordingly, levy of penalty is set aside.

9. Thus, for the reasons stated herein above, these Writ Petitions are partly allowed and the findings rendered by the respondent, in both the impugned assessment orders under the head Job Work Charges and Liability under Section 13 of the TNVAT Act are set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is at liberty to file affidavits, produce documents, records, etc., and the respondent shall afford an opportunity of personal hearing to the petitioner and peruse the documents and redo the assessment under both the heads (i) Job Work Charges and (ii) Liability under Section 13 of the TNVAT Act in accordance with law. The penalty levied is set aside in its entirety. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Vepery Assessment Circle,
10, Palaniappa Towers,
Greams Road, Chennai-6.

+1cc to Special Government pleader(T) sr.59157

+1cc to Mr.s.Ramanathan, Advocate sr.59641

W.P.Nos. 38734 & 38735 of 2015

ss(21/9/2017)