IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30364, 29506 & 29507 of 2013
and M.P.No.1 and 1 of 2013

Naagu Leathers,
Represented by its Managing Partner,
T.Kulandaivelu,
B 108 Dr. Lakshmana Swami Salai,
K.K.Nagar, Chennai 600 078 ... Petitioner in all W.Ps.

..vs..

The Assistant Commissioner (ST),
Saligramam Assessment Circle,
No.20, 88th Street, Kamarajar Salai,
Ashok Nagar, Chennai 600 083 ... Respondent in all W.Ps.

Prayer in WP Nos.30364 and 29506 of 2013:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in CST :843892/2010-11 dated 24.09.2013; TIN:33521423329/2010-11, dated 10.06.2013 and to quash the same as illegal with the direction to the respondent to consider the application dated 01.10.2013 filed under Section 84 of the VAT Act, 2006 read with Section 9(2) of the CST Act, 1956.

Prayer in WP No.29507 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in CST :843892/2010-11 dated 30.11.2012 and to quash the same as illegal and violative of principles of natural justice.

For Petitioner in all W.Ps. : Mr. N.Inbarajan
For Respondent in all W.Ps. : Mrs. G.Dhanamadhri, Govt. Advocate

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COMMON ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Taxes), who accepts notice on behalf of the respondent, in all the above writ petitions.

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 (in short "the Act") and the Central Sales Tax Act, 1956, is aggrieved by the orders passed by the respondent, dated 30.11.2012, 10.06.2013 and 24.09.2013. These orders are impugned in W.P.Nos.29507 of 2013, 29506 of 2013 and 30364 of

2013, respectively.

3. Since all the three impugned orders pertain to the very same assessment order, namely, 2011-12, under the provisions of the Central Sales Tax Act, the writ petitions are heard together.

4. The only question that falls for consideration in these writ petitions is with regard to the rate of tax payable in respect of the products dealt with by the petitioner in respect of those transactions, which are not covered with C Form declarations.

5. The respondent initially completed the assessment and passed the order on 30.11.2012 and levied tax at the rate of 12.5% in respect of the sales against C Forms not covered by forms. The petitioner filed their objections and subsequently, a modified order was passed on 14.03.2013. The petitioner filed a representation dated 23.04.2013 requesting to assess the tax at the rate of 4% for the finished leather on the ground that it is a declared goods and liable to be taxed at 4%, in terms of Serial No.41 of Part B of the First Schedule to the Act. On receipt of the same, the respondent passed an order, dated 10.06.2013 and not acceded to the

petitioner's submissions. Once again, the petitioner submitted a representation and an order was passed by the respondent, which is a revised assessment order, for the assessment year 2010-11, dated 24.09.2013. With regard to the rate of tax which is payable, the respondent does not specifically state in the impugned order dated 24.09.2013 that the rate of tax as claimed by the petitioner at 4% is incorrect. However, the petitioner has been non-suited on the ground that they have not raised this dispute earlier when the pre-assessment notice dated 03.10.2012 was passed. Therefore, the respondent proceed to levy the tax at the rate of 12.5%.

6. The manner in which the respondent has completed the assessment is erroneous. If the impugned orders are allowed to stand and the collection of tax at the rate of 12.5% is confirmed, then, it would amount to approving the illegal action of the respondent, since the respondent is not entitled to collect the tax over and above of what has been stipulated under the Act.

7. It is not in dispute that the petitioner has dealt with the declared goods, as specified in Section 14 of the CST Act. In terms of the clarification in Reference No.VAT Cell/24289/2007 (VCC

No.1266), dated 19.09.2007, the rate of tax to be levied is 4% under Entry 41 of Part B of First Schedule. Therefore, the levy of tax cannot be more than 4% and consequently, the levy of tax at the rate of 12.5% is erroneous and the reason for non-revising the rate of tax as mentioned in the impugned assessment order dated 24.09.2013 is unsustainable in law.

8. The above reasons are sufficient to set-aside the impugned order, dated 24.09.2014 with regard to the rate of tax.

9. The other issue, which the petitioner has pointed out in their representation, dated 15.07.2013 is that they made a request for deduction under Section 4 of the Central Sales Tax Act, on the ground that they have wrongly typed the CST Sales amount in Form No.I under deduction column (Rs.4,46,71,661/-) for the period from April 2010 to January 2011 and has not claimed deduction in CST Sales. Therefore, the petitioner requested to omit this amount of Rs.4,46,71,661/- and reckon the CST Sales amount only. It was further mentioned that CST turnover was Rs.4,46,20,165/- with Form C declarations and the turnover without Form C declaration was Rs.73,46,147/- only. This representation has not been considered by the respondent, while completing the assessment on 24.09.2013 and no specific reasons have been assigned as to why

such a plea is not acceptable. Therefore, the petitioner had filed applications for rectification on 01.10.2013, which is also pending consideration.

10. In the light of the above, Writ Petition No.30364 of 2013 is allowed and the impugned order, dated 24.09.2013, passed under the provisions of the Central Sales Tax Act, for the assessment year 2010-11, in so far as it levies tax at the rate of 12.5% as well as CST Sales amount are set-aside and the matters are remanded back to the respondent for fresh consideration. The respondent shall take note of the submissions set out by the petitioner in their petition under Section 84 of the Act dated 01.10.2013, afford an opportunity of personal hearing and pass fresh orders, by taking note of the submissions of the petitioner.

11. In the light of the orders passed in Writ Petition No.30364 of 2013, no further orders are required in Writ Petition No.29506 and 29507 of 2013. Hence, those writ petitions are closed. No costs. Consequently, the connected MPs are closed.

07.06.2018

Index : Yes / No
Web : Yes / No
Speaking Order / Non Speaking Order.
srk

To
The Assistant Commissioner (ST),
Saligramam Assessment Circle,
No.20, 88th Street, Kamarajar Salai,
Ashok Nagar, Chennai 600 083

T.S.SIVAGNANAM, J.,
srk

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