In the High Court of Judicature at Madras

Dated : 29.06.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.17934 to 17937 of 2013
&
M.P.Nos.1+1+1+1 of 2013

M/s.Handicrafts and Handlooms Exports
Corporation of India Ltd.,
Rep. by its Senior Manager-Technical
31, 32 Industrial Estate (SP)
Guindy, Chennai - 600 032 ... Petitioner in all W.Ps

Vs.

The Commercial Tax Officer
Royapettah I Assessment Circle
Chennai ...Respondent in all W.Ps

Writ petitions filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari calling for the records of the impugned proceedings of the respondent herein in CST 41032/1985-86 and CST 41032/1986-87 dated 20.05.2013, CST 41032/1989-90 dated 30.04.2013 and CST 41032/1990-91 dated 20.05.2013 and quash the same.

For Petitioners : Mr.Raveendran

For Respondent : Ms.G.Dhanamadhri
Government Advocate (Taxes)

COMMON ORDER

Heard Mr.Raveendran, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2. The petitioner has challenged the Assessment Orders under the provisions of the Tamil Nadu General Sales Tax for the assessment years 1986-87, 1989-90 and 1990-91 dated 30.04.2013 and 20.05.2013 respectively. In an earlier round of litigation, the matter travelled upto Tamil Nadu Sales Tax appellate Tribunal in T.A.No.861 of 1992 and T.A.No.860 of 1997. The issue which was considered by the Tribunal was whether the

nature of transaction done by the petitioner is an interstate transaction or not. The Tribunal, after hearing the parties, allowed the appeals and issued certain directions. At this juncture, it would be necessary to refer to the directions issued by the Tribunal in paragraphs 11 and 15 of the order:

> "11.The learned counsel for the appellants/assessees, by producing documents for a sample transaction, argued that the silk yarns were imported in bulk through the Chennai Port by the appellants and thereafter they were stock transferred to Bangalore office and for all these transactions Form 'F' declarations along with the evidence of despatch of goods were filed. The Bangalore Office, after receipt of silk yarn, had effects sales to the manufacturers located at Kollegal and Bangalore and thus the appropriation took place at Bangalore and hence the sale by appropriation took place within the meaning of Section 4(2) of the Central Sales Tax Act, 1956 at Bangalore only and therefore, these transaction could not be treated as inter-state sale effected from the State of Tamil Nadu. Further the imported silk yarn was only general and standard goods and silk yarn was not earmarked or set apart for any particular customer when it was despatched.
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> "15. Admittedly the issue involved in our cases in the same as that of the issue involved in the above writ petition. Hence we, by setting aside the orders of the lower authorities, remit the turnover of Rs.85,49,859/- and Rs.50,62,648/- for the years 1989-90 and 1990-91 respectively to Assessing Officer to pass fresh orders, in the light of the decision of the Hon'ble Supreme Court of India in the case of M/s.Ashok Leyland Ltd., Vs. State of Tamil Nadu reported in 137 STC 473 and in accordance with law.

3. In Paragraph 11 of the order passed by the Tribunal, as extracted above, submission of the Assessee was noted and after taking into consideration the orders passed by this Court in W.P.No.6102 of 2001 dated 25.09.2008 in the Assessee's own case, directed the Authority to redo the assessment. The Tribunal did not stop with that, but directed that the Assessing Officer should take note of the decision of the Hon'ble Supreme Court in M/s.Ashok Leyland's case. Thus, the respondent was required to examine the case of the petitioner in the light of the law laid down by the Supreme Court in M/s.Ashok Leyland's case. On a perusal of the impugned order, I find that though in the second page of the order of assessment in unnumbered paragraph 3, there is a reference to 137 STC 473 (SC), while discussing the merits of the matter, the respondent has not even referred to the said decision as to its applicability or non-applicability, but, it

has referred to another decision in South India Viscose Ltd., Vs. State of Tamil Nadu reported in 48 STC 232. The respondent, being an officer subordinate to that of the Tribunal in the hierarchy under the provisions of the Act, he is bound by the directive of the Tribunal. It is always open to the respondent to take a decision by examining the facts of the case as Tribunal has given certain direction to the Assessing Officer to decide the matter afresh in the light of the decision of the Hon'ble Supreme Court in Ashok Leyland's case. Thus, firstly the respondent should acquaint himself with the legal position laid down in Ashok Leyland's case and examine the facts and take a decision .

In the result, the writ petition is allowed and the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration. The respondent shall take note of the directions issued by the Tribunal in Paragraph 14, and the facts which have been placed before the Tribunal as well as before him and take an independent decision in the matter. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer
Royapettah I Assessment Circle
Chennai

+1cc to the Government Pleader(TAXES), S.R.No.42442

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TR(11/07/2018)