In the High Court of Judicature at Madras

Dated : 17.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8731 of 2016 & WMP.No.7717 of 2016

M/s.AL-Furqan International,
rep.by its Proprietor ...Petitioner

Vs

The Commercial Tax Officer (FAC),
Vaniyambadi Assessment Circle,
Vellore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33914641914/2008-09 dated 03.7.2015 and quash the order passed therein as illegal and amounts to double taxation of the same commodity.

For Petitioner : Mr.C.Bakthasiromani

For Respondent : Mr.M.Hariharan, AGP

ORDER

Heard both.

2. The petitioner is aggrieved by an order of assessment dated 03.7.2015 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2008-09.

3. The learned counsel for the petitioner submits that the revision of assessment was based on a audit report bearing Audit Report No.A1.211/13 (AAO-10).

4. The learned counsel for the petitioner has canvassed three grounds before this Court, firstly contending that the

assessment relates to the year 2008-09 and if the same is to be done, it can be done within a period of five years and beyond 2013-14, the assessment cannot be reopened. But, the same has been done by issuing the notice dated 12.3.2015. Secondly, the learned counsel for the petitioner has contended that the respondent did not independently consider the matter, but verbatim followed the directions in the audit report and therefore, the impugned order is vitiated. Thirdly, it is contended by the learned counsel that the respondent, having accepted that the petitioner has been assessed to a total and taxable turnover of Rs.47,40,854/- and Rs.47,40,854/- respectively for the relevant assessment year under Section 22 (2) of the said Act, erroneously levied tax for the purchase of raw skin from unregistered dealers in terms of Section 12 of the said Act, which were converted into finished leather and that the impugned proceedings amounts to double taxation for the same product.

5. The respondent filed a counter affidavit, inter alia, contending that raw hides and dressed hides fall under Section 14(iii) of the List of Declared Goods and that in the process of making raw hides into finished leather, there were series of changes. In this regard, the learned Additional Government Pleader has referred to the decision in the case of Golden Leathers Vs. STAT, Chennai [reported in 35 VST 216]. It is further submitted that in terms of Section 12(1)(a) of the said Act, the goods purchased from unregistered dealers and used for manufacture are liable to tax under Section 12 of the said Act. On the above grounds, the respondent seeks to sustain the impugned order.

6. In the considered view of this Court, the issues raised by the petitioner are wholly factual and therefore, the petitioner should not be permitted to canvass those factual issues before this Court. However, the impugned assessment has been completed ex parte for the reason that the petitioner did not respond to the revision notice.

7. The learned counsel for the petitioner submits that the petitioner is not a well educated person, though good in their trade and if one opportunity is granted, the petitioner will go before the Assessing Officer and establish that the assessment does not require any revision.

8. Considering the fact that the writ petition is pending from 2016 and the factual issues require to be adjudicated, this

Court is of the view that the matter can be remanded to the respondent for a fresh consideration.

9. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall consider the same, afford an opportunity of personal hearing, peruse the documents, if any and redo the assessment on merits and in accordance with law. Till then, no coercive action shall be taken against the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer (FAC), Vaniyambadi Assessment Circle, Vellore District.

+1cc to the Special Government Pleader Sr.47682

WP.No.8731 of 2016&
WMP.No.7717 of 2016

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srg 6/8/2018