IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 13943 of 2013
and
M.P. No. 1 of 2013

Sri Suganeswari Traders,
Represented by its Proprietor,
K.M. Jambulingam,
D.No.W-4, Old Bye-pass Road,
Kamaraj Nagar, Uthankarai,
Krishnagiri District - 635 207. ... Petitioner

Vs

The Commercial Tax Officer,
Harur Assessment Circle,
Salem Bye-pass Road,
Commercial Taxes Building,
Harur. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in Asst.No.33893340670/2007-2008 dated 27.02.2013 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr. R. Senniappan

For Respondent : Ms. Dhanamadri
Government Advocate (Taxes)

ORDER

This writ petition has been filed by the Petitioner, praying for the issuance of Writ of Certiorari, to call for the records on the file of the Respondent in Asst.No.33893340670/2007-2008 dated 27.02.2013 and quash the same as being without jurisdiction and authority of law.

2. The Petitioner has challenged the order passed by the Respondent on 27.02.2013 for the Assessment Year 2007-2008. Earlier the Petitioner was issued with a notice wherein it was mentioned that no purchase tax was paid of Cotton Kappas. This resulted in an order re-fixing of the taxable turn over as below:

Taxable turnover Originally determined	Rs. 10,43,47,874/- @ 4%
Add: Purchase turnover u/s 12	Rs. 8,04,69,399/- @ 4%
Total and taxable turnover proposed to be re-fixed	Rs. 18,48,17,273.00/-

3. Accordingly, the Petitioner was called upon to pay the amount to Rs.32,35,871/- as detailed in Page No.8 which is reproduced below:

Output Tax due	Rs. 73,92,691.00/-
ITC adjusted	Rs. 13,21,734.00/-
Balance	Rs. 60,70,957.00/-
Tax paid as per the original assessment order	Rs. 28,35,086.00/-
Balance	Rs. 32,35,871.00/-

4. In these circumstances, the Petitioner filed the Petition under Section 84 of the Tamil Nadu Value Added TAx Act, 2006 (Shortly the TNVAT Act) before the Respondent on 15.12.2012 wherein the Petitioner agreed to pay Purchase Tax under Section 12 of the TNVAT Act, on Cotton Kappas (Raw Cotton purchase from various marketing societies and from agriculturalists as per the date given by him).

5. A second revision notice dated 21.12.2012 was issued wherein the taxable turn over of Cotton Kappas was reduced to Rs.5,70,79,208/- from Rs.8,04,69,399/-. Be that as it may, the Petitioner gave a reply on 06.01.2013 wherein once again the Petitioner admitted to pay purchase Tax on the taxable turn over of Rs.5,70,79,208/- of Cotton Kappas. It is now the contention of the Petitioner that Purchase Tax under Section 12 (1) (a) will apply only on purchase from the registered dealer who fails to pay tax and not on purchase of goods from unregistered dealers.

6. The learned counsel for the Petitioner submits that the expression "in circumstances in which no tax is payable by the registered dealer on the sale price of such goods under this Act" in Section 12(1) will apply only to purchase from a registered dealer who failed to pay tax either on account of exemption or on account of any other reasons and therefore purchase of raw material or goods from the unregistered dealer such an agriculturalist would not be liable to purchase Tax. The learned counsel for the Petitioner further submits that the order that has been passed under Section 12 (1) (b), will apply only where purchase is from a manufacturer and not from an agriculturalist. He further submits that the Petitioner is merely a dealer and the question of payment of "Purchase Tax" under Section 12 (1) will not apply only to the Petitioner as the Petitioner is not a manufacturer and therefore, the demand in levy of purchase tax on Cotton Kappas purchased from various agriculturalists and society will not attract the Provisions of TNVAT Act. Finally the learned counsel for the Petitioner submits that since the order has been passed without following the Principles of Natural Justice and without giving opportunity of hearing as contemplated under Section 84 of the TNVAT Act, the impugned order was liable to be set aside.

7. Defending the order, the learned Government Advocate for the Respondent submits that the order is well reasoned and requires no interference. She further submits that any purchase by a registered dealer whether from a registered dealer or an un-registered dealer of the goods which has not suffered tax is taxable and purchase tax is payable and the tax that is paid as purchase tax would be available by way of Input Tax Credit under a special dispensation under Section 12 (2) of the TNVAT Act, 2006. The learned Government Advocate therefore submits that though the Petitioner is liable to pay Tax, the Petitioner may have to work their right avail and utilize the same for discharging VAT liability for the subsequent period if any. The learned Government Advocate further submits that the submission of the learned counsel for the Petitioner that he is only dealing in Cotton Kappas may not be correct as the Petitioner is only carrying on certain processing before selling cotton lint and therefore it may not be factually correct to state that the Petitioner was not carrying out any processing in the cotton purchased from various cotton dealers and agriculturalists.

8. Heard the learned counsel for the Petitioner and the learned Government Advocate for the Respondent.

9. The arguments of the learned counsel for the Petitioner that no purchase tax is payable under Section 12 (1) of the Act appears to be incorrect in as much as the tax is payable on such purchase. Section 12 (1) is an exception to Section 3 of the Act. Further, a special dispensation has been provided to avail credit of such Tax as Input Tax Credit and to utilise the same under Section 12 (2) of the Act. Thus, the Petitioner was liable to pay tax.

10. In these circumstances, I uphold the demand for levy of purchase tax in the impugned order. The Petitioner may however proceed to avail credit of such Tax under the Provisions of Section 12 (2) of the TNVAT, 2006 and utilize the same under the Provisions of the Tamil Nadu Goods & Service Tax Act, 2017 if there are no other adjustment of Tax to be made under the TNVAT act, 2006.

11. This writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Harur Assessment Circle,
Salem Bye-pass Road,
Commercial Taxes Building,
Harur.

+1cc to Special Government Pleader SR.No.106735

W.P. No. 13943 of 2013
and
M.P. No. 1 of 2013

SR(CO)
GMY(11/02/2020)