IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.4893 of 2013
and
M.P.No.1 of 2013

Coimbatore Murugan Mills
(A Unit of National Textile Corporation Limited)
represented by its General Manager (i/c)
R.Seenivasagam
Mettupalayam Road
P.Box No.7004
Coimbatore - 641 043. ... Petitioner

(Cause title amended as per
order dated 07.03.2012 in M.P.No.2 of 2013)

Vs.

Assistant Commissioner (CT)
Mettupalayam Road Circle
Coimbatore - 18.
... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records on the files of the respondent in his TIN No.33882002900/11-12, dated 28.12.2012 and quash the same.

For Petitioner : Mr.N.Prasad

For Respondents : Mr.M.Hariharan
Additional Government Pleader

ORDER

Heard Mr.Prasad, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondent in detail.

2. The challenge is to assessment dated 28.12.2012 framed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2011-12.

3. The petitioner is a unit of the National Textile Corporation Limited (NTCL), which is a Government of India Undertaking. NTCL comprises of seven textile mills with showrooms in Tamil Nadu as well as a retail marketing division. The assessable entity is NTCL and its units, of which the petitioner is one, not have any separate legal existence. However, since they are located in different parts of State of Tamil Nadu, separate registrations for the purpose of sales tax have been sought and obtained.

4. The issues that arise from the impugned assessment for resolution and my decision in regard to the same are set out below.

5. Issue No.1 relates to Stock Transfer of Yarn from one Pankaja Mills, Trichy Road Assessment Circle and one Kaleeswarar Mills, B Unit, Sivagangai Assessment Circle to the petitioner that have been treated as a sale to the petitioner and brought to tax for non-payment of purchase tax. The three mills i.e., Pankaja Mills, Kaleeswarar Mills and the petitioner, Coimbatore Murugan Mills, are units of NTCL and hence, though allotted separate TIN numbers and assessed separately, in effect, constitute units of NTCL.

6. The activities of all the units are inter related and this has been explained by the petitioner in its objection dated 24.12.2012 to the pre-assessment proposal. The petitioner has brought to the notice of the authority that the Government of India, through the Ministry of Textiles had taken over and nationalised sick textile undertakings forming a Company named as National Textile Corporation Limited, New Delhi since 1965. The Tamil Nadu Mills were nationalized on 01.04.1974 in terms of the Sick Textile Undertakings (Nationalisation) Act, 1972. The First Schedule to the aforesaid enactment contains the names of the mills that were nationalised and this was produced before the assessing officer pointing out that the name of the petitioner figured in Serial No.28, Pankaja Mills in Sl.No.77 and Kaleeswarar Mills 'B' Unit in Sl.No.49 thereof.

7. Therefore, I am of the view that the transfer of materials and resources inter se these mills cannot be treated as independent transactions for sale and purchase liable to tax under the Act. In fact, this issue has been considered in the context of the levy of sales tax upon one of the constituent mill units and a learned Single Judge of this Court in W.P.Nos.28365 of 2013 and 12211 of 2014, order dated 08.11.2016 has taken the identical view as expressed by me. This issue is allowed.

8.Issue No.2 relates to non deduction of tax in terms of Section 13 of the Act. The petitioner has supplied yarn for bleaching and dyeing to units of the Tamil Nadu Co-operative Societies. Such transactions would be of the nature of job works not liable to deduction of tax. The TIN Number of the job worker has also been supplied to the officer with a submission that the tax component of the transaction has been defrayed by the job worker. The assessing authority however proposes the addition of the entire amount as taxable turnover in the hands of the petitioner. Even in the objection filed before the authority, the petitioner reiterates that transactions of the nature of job work do not constitute taxable transactions.

9. In rejoinder filed to the counter, the learned counsel for the petitioner has enclosed certain additional documents including correspondence between itself and the job worker and the return of income filed by the job worker to establish that the liability of tax has been met by the payee. This aspect calls for examination and verification by the officer and the learned Additional Government Pleader has no objection to the matter being remanded for this purpose. Accordingly, this issue is remanded to the file of the assessing officer for being re-done denovo after taking into account all/any relevant materials that may be produced by the petitioner.

10.Issue No.3 relates to Non-Reversal of Input Tax Credit on exempted sale. The provisions of Section 19(5)(a) and 19(5)(6) empower the authority to reverse input tax in relation to purchases of a capital asset, used in manufacturing process. Admittedly, certain details were called for by the assessing authority in this regard, that were produced by the petitioner. According to the petitioner the asset in question was purchased in August, 2011 and the reversal has been effected in accordance with the formula contained in Rule 10(4)(e) of the Tamil Nadu Value Added Tax Rules. In the interests of justice and in the absence of any serious objection raised by the Additional Government Pleader, this issue is set aside and remanded to the file of assessing authority to be re-cone, after hearing the petitioner.

11.The last issue relates to an estimated addition made in regard to the turnover for the month of February 2012. This issue has been considered and allowed by the officer by order dated 31.10.2019.

12. The petitioner will appear before the Assessing Authority on 16.12.2019 without expecting any further notice of hearing in this regard. After hearing the petitioner and

considering all/any materials that may be placed for consideration, orders of assessment shall be passed denovo and in accordance with law on the three(3) issues as aforesaid within a period of four (4) weeks from date of receipt of a copy of this order.

13. This Writ Petition is allowed in part, to the extent as indicated above. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Mettupalayam Road Circle
Coimbatore - 18.

+1 cc to M/s.N.Inbarajan,Advocate Sr.No. 99746
+1 cc to The Special Government Pleader(Taxes), SR.No.100492

AKM/17.12.19/4P-4C /

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