IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Revision No. 13 of 2013

Tvl.Ind Fashion Exports (P) Ltd,
Rep by its Managing Director
Vinod Mangaram Mahtani.

...Petitioner

-vs-

The State of Tamil Nadu,
Rep by the Deputy Commissioner (CT),
Chennai (Central) Division,
Chennai – 600 006.

...Respondent

Tax Case Revision filed under Section 38 of the Income Tax Act, 1961 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai in S.T.A.No.637 of 2006, dated 20.09.2012.

For petitioner : Mr.P.R.Kumar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Tax Case Revision is filed under Section 38 of the Income Tax Act, 1961 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai in S.T.A.No.637 of 2006, dated 20.09.2012.

2. Heard Mr.P.R.Kumar, learned Counsel for the petitioner and Mr.V.Hari Babu, learned Additional Government Pleader for the respondent.

3. This Tax Case Revision has been admitted on 25.03.2013, on the following Substantial Questions of Law:

> *"(i) Whether the order passed by the Sales Tax Appellate Tribunal (Main Bench) Chennai in S.T.A.No.637 of 2006 dated 20.09.2012 is in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959?*
>
> *(ii) Whether the Tribunal was correct in confirming the levy of tax under Section 3(b) of the TNGST Act when there was no concrete evidences from the revenue to prove that the*

petitioners have transferred the materials in the job work?

(iii) Whether the Tribunal is justified in confirming the levy of tax on job merely on the ground that there was no written agreement for stitching of job work, but in contrary supported by delivery challans, only job work?"

4. The assessee's case is that they received fabric and other material from their principal for the purpose of stitching and redelivery and it is only a job work. On a perusal of the assessment order dated 31.03.2005, for the year under consideration namely 2003-04, it is seen that the assessee has produced certain documents to establish that they have carried on job work. The Assessing Officer while discussing about the documents, rejected the same on the ground that they are unauthenticated Xerox copies and the delivery challans are not relevant for the assessment year under consideration.

5. The assessee's case is that a bunch of documents were produced before Assessing Officer. Having visited with an assessment order determining the deemed sale value at Rs.44,49,420/- and added to the demands under the other heads, the petitioner/dealer filed an

appeal before the Appellate Assistant Commissioner (CT) III. The First Appellate Authority by order dated 06.04.2006 allowed the appeal on the ground that the petitioner received cloth as well as material necessary for stitching from the manufacturers and also made an observation that the Departmental Representative verified the documents produced by the petitioner before the First Appellate Authority.

6. The First Appellate Authority held that the Assessing Officer proceeded on a presumption that there was transfer of property involved in the course of executing of stitching job to assess the disputed turnover under Section 3B of the Tamil Nadu General Sales Tax Act, 1959 as basis. Accordingly, the assessment was set aside. Thus, the respondent preferred an appeal before the Tribunal, which was allowed by the impugned order.

7. We have perused the reasons assigned by the Tribunal for allowing the appeal filed by the Revenue and we find that the Tribunal proceeded on independent footing which was not the manner in which the Assessing Officer had completed the assessment. One important fact is that the Tribunal noted that the petitioner carries on job work

also apart from manufacturing for export. However, the petitioner was denied relief on the ground that the purchase value of fabric and embellishments used for job work could not be dissected and arrived at. The petitioner's specific case is that the delivery challan of fabric and material for the purpose of job work will only contain the quantity and not the price, since the petitioner has to complete this job of stitching and returning the finishing goods to the principal.

8. The assessee's further case is that the bunch of documents which was produced before the Assessing Officer was once again produced before the Tribunal. A copy of paper book filed before the Tribunal containing the list of documents file was produced before us. In our considered view, once the revenue accepts that the petitioner has also done job work, it has to analyse as to whether the documents produced by the petitioner support the stand taken by the petitioner that they have done job work. We are of the view that the Tribunal should not have rejected the documents solely on the ground that the value of the material has not been mentioned. If the revenue does not dispute that the petitioner does job work, it goes without saying that the delivery challan for delivery of goods for job work will only contain the quantity and not the rate. Therefore the documents produced by

the petitioner ought to have been examined from that angle without reference to the price of the material as no sale could be involved in case of job work.

9. Thus, for the above reasons, we are of the considered view that the matter requires to be re-examined by the Assessing Officer in proper perspective as indicated above by us. For the above reasons, the appeal is allowed and the order of the Tribunal as well as the order of the First Appellate Authority and the Assessment order are set aside and the matter is remanded back to the Assessing Officer for fresh decision on merits and in accordance with law, after affording an opportunity of hearing to the authorized representative of the petitioner and after examining the documents that may be produced by the petitioner without insisting upon the value of the material which was handed over to the petitioner for a job work.

10. It is well open to the petitioner to produce oral evidence and other documents to substantiate their case that they received material from their principal for the purpose of carrying on job work.

11. In the result, the appeal is allowed and the order of the Tribunal as well as the order of the First Appellate Authority and the Assessment order are set aside and the matter is remanded back to the Assessing Officer for fresh decision. No costs.

[T.S.S., J.] **[N.S.K., J.]**

mrm/ssb **24.01.2019**

T.S.Sivagnanam, J.
and
N.Sathish Kumar, J.

mrm/ssb

To

Tamil Nadu Sales Tax Appellate Tribunal (Main Bench),
Chennai

T.C.R.No.13 of 2013

24.01.2019