IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.32470 & 32471 of 2014
MP.No.1, 1, 2 & 2 of 2014

M/s.National Handloom Development Corporation Limited-(A Government of India Undertaking)
Rep.by its Deputy Manager
(Finance & Accounts)
Mr.Ravi Anand ...Petitioner in both WPs

--Vs--

The Assistant Commissioner (CT),
Peelamedu (North) Circle
Coimbatore ... Respondent in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN/33192121474/2011-12, 2012-13 dated 09.10.2014 and quash the same.

For Petitioner (in both): Mr.S.Rajasekar

For Respondent (in both): Mr.G.Dhana Madhri
Government Advocate

O R D E R

The petitioner before me is the National Handloom Development Corporation Ltd. (NHDCL) and challenges assessments for the periods 2011-12 and 2012-13 in terms of the Tamil Nadu Value Added Tax, 2006 (in short 'Act), both dated 09.10.2014. The NHDCL, stated to have been set up in February 1983 as a Public Sector Undertaking by the Government of India, is an autonomous body constituted under the Companies Act, 1956 in recognition of the imperative for a National Level Agency to assist the speedy development of the handloom sector. Its activities include the coordination of activities in regard to the procurement and supply of inputs at reasonable prices, augmenting the marketing efforts of the State and assisting in the upgradation of technology in the handloom sector, among others.

2. According to the petitioner, it operates on a no profit no loss basis and merely facilitates the transactions of purchase and sale of yarn between its constituent units ('units') and co-operative societies.

3. While this is so, the Assessing Officer, according to the order of assessment, verified the records, noticing purchases of silk yarn from one, Salsar Corporation (in short 'Salsar') in Bangalore. The said Salsar Corporation, as seen from extracts of the website available in the records that have been summoned and produced before the Court, is an importer and trader in Chinese Silk. Certain bills of purchase and sale transactions between Salsar and the units were noticed wherein the commodity was stated to be 'silk yarn in hank'.

4. According to the Assessing Authority, the nexus in regard to the purchase of the imported yarn from Salsar by the petitioner and sale of the same yarn to the co-operative societies in Tamil Nadu on identical valuation was clearly established. The goods, according to the officer, were sent directly from Salsar Bangalore to the concerned society upon instructions from NHDCL. Freight in respect of the transactions was remitted by the recipient societies. According to the Officer, the sale of the imported silk to the societies constituted a first sale within the State of Tamil Nadu, liable to tax.

5. The Officer, in the impugned order, refers to enquiries that had been carried out with respect to the activities of Salsar and with the co-operative societies itself, coming to the conclusion that the silk yarn purchased by NHDCL from Salsar and sold by it to the Societies was one and the same. He concluded, on the basis of the enqiries that such purchase and sale transactions involving exempted goods (local silk hank yarn) were clandestine and engaged in with the intention of avoiding payment of tax thereupon.

6. A pre-assessment proposal was sent along the aforesaid lines to the petitioner, who objected to the same. The petitioner reiterated that the yarn bought from Salsar was only indigenous silk yarn in hank. A Confirmatory affidavit of the proprietor of Salsar, one Ashok Kumar, was filed. It was also specifically submitted that the petitioner had no margin of profit on the sales effected to the societies. The petitioner requested that in the event of the Assessing Officer intending to conclude the matter adverse to its interest, it should be granted an opportunity of cross-examining the representatives of the co-operative societies.

7. While the assessment proceedings were on-going, the petitioner, apprehending that the assessments would be completed

in violation of the principles of natural justice, had approached this Court in W.P.Nos. 32181 & 32182 of 2012, and by order dated 04.12.2012, this Court directed that all relevant material that the Officer intends to rely upon, be supplied to it. The following documents were thereafter supplied to the petitioner pursuant to order of this Court:

a. Statement dated 09.08.2012 by the Manager of Sirumugaipudur Sri Ramalinga Sowdambigai WCS, Sirumugai.

b. Copy of our Bill No.C-4015/13 dated 10.07.2012.

c. Copy of our Bill No.C-4367/13 dated 18.07.2012.

d. Statement dated 09.08.2012 by the Manager of Vellikupampalayam Sri Sakthi Vinayagar WCS, Sirumugai.

e. Copy of our Bill No.C-4065/13 dated 18.07.2012(front & back).

f. Copy of our Bill No.C-3998/13 dated 10.07.2012 (front & back).

8. Objections were called upon from the petitioner again, and the impugned orders passed, wherein the officer relies on the provisions of Section 81 and 82 of the Act, vesting power in the Assessing Officer for the purposes of obtaining information from third parties in relation to finalisation of asessment. As regards the opportunity sought for cross-examination the officer negates the same, stating that such opportunity was only academic and that the assessee could well have obtained an affidavit from the co-operative societies as it had done from Salsar Corporation.

9. Having heard learned counsel and upon careful perusal of the pleadings, evidences and records of assessment produced before me, it appears very apparent that the principles of natural justice have been given a go-by in the present case. The extracts from the website relied upon by the Department no doubt reveal that Salsar was a trader and importer of yarn. However, this, by itself cannot lead to the inference of clandestine sales by the petitioner to the societies. An enquiry would have to be carried out in an appropriate manner after providing the material relied upon by the Department to the petitioner and soliciting its responses to the same, before any conclusion to this effect is arrived at. Moreover, admittedly, the statements recorded from the co-operative societies have not been supplied to the petitioner and this also militates against the principles of natural justice. It is incumbent that a copy of such materials, including statements that are relied upon by the Assessing Officer be furnished to the petitioner, and an opportunity be grated to it to cross-examine the parties upon whose statement reliance is intended to be placed. The impugned orders are set aside.

10. The materials that the Assessing Officer proposes to rely upon, including statements recorded from the representatives of the co-operative societies will be furnished to the petitioner. Thereafter a notice of personal hearing be issued and the assessment completed de novo after hearing the petitioner and considering all/any objections that may be raised by it and affording an opportunity of cross-examination of persons whose statements are relied on. Let this exercise be completed within twelve (12) weeks from date of receipt of this order.

11. These writ petitions are allowed in the above terms. Connected MPs are closed with no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Peelamedu (North) Circle
Coimbatore

+1cc to Mrs.R.Hemalatha, Advocate SR.No.97822

+1cc to Special Government Pleader (Taxes) SR.No.97795

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EV(CO)

GMY(21/01/2020)