IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22212, 22215 & 22216 of 2019
and
W.M.P.No.21496, 21497 & 21500 of 2019

M/s.Sulochana Cotton
Spinning Mills (P) Limited
Represented by S.Krishna Kumar,
Managing Director
Palladam Road, Tirupur. .. Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT)
Tirupur (South) Assessment Circle
Tirupur. .. Respondent in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records on the files of the respondent in TIN: 33982320908/2012-13, TIN: 33982320908/2013-14 and TIN: 33982320908/2014-15 dated 04.03.2019 and quash the same as being without jurisdiction, violative of principles of natural justice and arbitrary and hence invalid and illegal, and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Srikanth
(In all W.Ps)

For Respondent : Mr.V.Haribabu
(In all W.Ps) Additional Government Pleader



COMMON ORDER

Mr.V.Srikanth, learned counsel on record for writ petitioner in all the three writ petitions is before this Court. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity), who accepts notice on behalf of sole respondent in all the three writ petitions is before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. Subject matter of instant writ petitions arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity. These three writ petitions on hand pertain to 'three Assessment Years viz., 2012-13, 2013-14 and 2014-15', which shall hereinafter be referred to as 'said AYs' for the sake of convenience and brevity.

4. Writ petitioner is a dealer under TNVAT Act. There is no disputation that writ petitioner entrusted work of dying cotton to other entities/individuals, on job work basis. For this, writ petitioner ought to have 'Deducted Tax at Source' ('TDS' for brevity) at 5%, on the payments made to the job workers. This requirement is inter alia under Section 13 of TNVAT Act.

5. Alleging that writ petitioner has not made TDS as required inter alia under Section 13 of TNVAT Act, notices were issued to writ petitioner being notices qua said AYs, but all dated 26.10.2018. Writ petitioner sent separate replies to each of the notices. Thrust of the submission in the reply is that, writ petitioner's deductee i.e, the job workers, to whom the aforesaid job work was entrusted by writ petitioner, has paid the tax and therefore, writ petitioner cannot now be called upon to pay tax, which the writ petitioner ought to have deducted by way of TDS inter alia under Section 13 of TNVAT Act. To be noted, term 'deductee' is used for convenience, though actual deduction TDS has not happened.

6. Respondent, holding that the reply submitted by writ petitioner cannot be considered on the ground that it contravenes of TNVAT Act, passed three assessment orders bearing Reference Nos.TIN: 33982320908/2012-13, TIN: 33982320908/2013-14 and TIN: 33982320908/2014-15, all dated 04.03.2019 (hereinafter 'impugned assessment orders' in plural and impugned assessment order' in singular). Assailing the impugned assessment orders, instant writ petitions have been filed.

7. Learned counsel for writ petitioner, to buttress his submissions, pressed into service a judgment of Hon'ble Supreme Court being Hindustan Coca Cola Beverage P. Ltd. Vs. Commissioner of Income-Tax reported in [2007] 293 ITR 226(SC) and a Division Bench judgment of our High Court being a judgment made in S.A.A.Ispahani Trust Vs. The Income Tax Officer reported in [2013] 216 TAXMANI (Mad).

8. Relevant paragraph in Hon'ble Supreme Court judgment in

Hindustan Coca Cola case is paragraph 7 and the same reads as follows:

> '7.The Tribunal upon rehearing the appeal held that though the appellant assessee was rightly held to be an 'assessee in default', there could be no recovery of the tax alleged to be in default once again from the appellant considering that Pradeep Oil Corporation had already paid taxes on the amount received from the appellant. It is required to note that the Department conceded before the Tribunal that the recovery could not once again be made from the tax deductor where the payee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereon. There is no dispute whatsoever that Pradeep Oil.'

9. Relevant paragraphs in our Hon'ble Division Bench case being S.A.A.Ispahani Trust case are paragraphs 10 to 12 and the same read as follows:

> '10. The Tribunal found that the assessee is obliged under Section 194C to deduct tax at source on contract payments as and when such payments exceed Rs. 20,000/- and to pay such TDS to the Government account within one week from the last date of the month in which deduction is made. It is also found by the Tribunal that it is a clear case where the assessee has failed to deduct tax on the entire contract payments made to the contractor and the assessee has also failed to produce any evidence for the taxes already deducted as contended by them. Therefore, the Tribunal found that the assessee is in default under Section 201 (1) and also liable to pay interest under Section 201(1A) from the day on which the tax was required to be paid under Section 194C upto the date of actual payment. These factual findings rendered by all the authorities below in holding that the assessee is in default under Section 201(1) of the Income Tax Act do not warrant any interference by this Court. On the other hand, as already stated supra, the learned counsel for the assessee wanted this Court to follow the decision of this court reported in MANU/SC/7803/2007 : (2007) 293 ITR 226 (SC) (Hindustan Coca Cola Beverage P. Ltd., Vs. Commissioner of Income Tax) and to grant the relief to the assessee as per the law laid down therein.
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> 11. A perusal of the said order of the Hon'ble

Supreme Court in Hindustan Coca Cola Beverage case would show that the assessee therein was held "as assessee in default" under Section 201(1) of the Act and also levied interest under Section 201(1-A). The assessee therein contended that the recipient therein has been assessed on their income and the tax due has been recovered from them by the Department and therefore no further tax could have been collected from the assessee therein. The said contention was accepted by the Tribunal. It was held that though the assessee therein was held to be as assessee in default, there could be no recovery of the tax alleged to be in default once again from the assessee therein considering the fact that the recipient had already paid the tax on the amount received from the assessee. The said order of the Tribunal was challenged before the High Court which in turn interfered with the same. Further appeal came up before the Hon'ble Supreme Court. In the said appeal, the Apex Court found that the Tribunal came to the right conclusion that the tax once again could not be recovered from the appellant therein since the tax has already been paid by the recipient of the income. The Apex Court also relied on the circular issued by the Central Board of Direct Taxes in Circular No. 275/201/95-IT (B) dated 29.1.1997 wherein it is declared that no demand visualised under Section 201(1) of the Income Tax Act should be enforced after the tax deductor has satisfied the Revenue that taxes due have paid by the deductee-assessee. While holding so, the Apex Court however pointed out that such position will not alter the liability to charge interest under Section 201(1A) till the date of payment of taxes by the deductee assessee.

12. Going by the said decision, what emerges is that the even though the appellant herein is held as assessee in default, tax cannot be recovered from them, if the same has been paid by the recipient viz., TNREL. However, it would not absolve their liability to pay interest under Section 201(1A) from the date of its liability till the date of actual payment made by the recipient. There are no findings rendered by the authorities below with regard to the payment of tax by the recipient and its quantum. Therefore, the matter requires to be remitted back to the Assessing Officer to re-work the quantum of liability as well as the interest in the light of the decision made

by the Hon'ble Supreme Court reported in MANU/SC/7803/2007 : (2007) 293 ITR 226 (SC) (Hindustan Coca Cola Beverage P. Ltd., Vs. Commissioner of Income Tax). It is needless to say that the Assessing Officer should find out as to what extent the recipient had paid the tax. If the entire tax amount as claimed from the assessee herein has been paid by the recipient, then there cannot be any further demand of the same from the assessee. On the other hand, if the recipient had only paid part of the tax amount, then rest of the same shall be recovered from the assessee. Insofar as the interest demand is concerned, the assessee is liable to pay the interest from the date of its liability till the date of actual payment made by the recipient. Accordingly, the Assessing Officer is directed to re-compute the liability of the assessee and pass fresh orders. The questions of law raised in both the appeals are answered accordingly. The Tax Case Appeals are disposed of accordingly. Consequently, the connected M.P. is closed. No costs.'

10. There is no disputation that the principle of law or the proposition is that, in cases of TDS, when the deductee has paid the entire tax liability on the monies received, the entity/person, who has the obligation to deduct at source cannot be mulcted with liability. However, the rider is that the entity which has the obligation of deduction and has not complied with the same is liable to pay interest for the delayed period, besides penalty under Section 13(5) and 13(8) (respectively) of TNVAT Act.

11. In the light of aforesaid undisputed obtaining position of law, it is necessary that the respondent is directed to redo the assessment by taking into account the principles laid down in Hindustan Coco Cola Beverage case and S.A.A.Ispahani Trust case by Hon'ble Supreme court and Hon'ble Division Bench of this Court respectively relevant portions of which have already been extracted and reproduced supra in this order.



12. Therefore, the following order is passed:

a) impugned orders being orders bearing Reference No. TIN: 33982320908/2012-13, TIN: 33982320908/2013-14 and TIN: 33982320908/2014-15, all dated 04.03.2019 are set aside. To be noted, as the respondent is directed to redo the assessment, no opinion is expressed on merits in this order except saying Hindustan Coco Cola Beverage and Ispahani Trust principles will apply to cases on hand.

b) Though obvious, it is made clear that respondent shall redo the assessment after issuing show cause notices afresh to writ petitioner. While so redoing the assessment, respondent shall bear in mind the principles laid down by Hon'ble Supreme Court and Hon'ble Division Bench of this Court in Hindustan Coco Cola Beverage case and S.A.A.Ispahani Trust case. The citation having been referred to supra.

c) The aforesaid exercise of redoing the assessment after issuing show cause notice shall be completed as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order. Though obvious, it is made clear that the show cause notices shall clearly mention the tax component (if any) interest component and penalty (if any) so that writ petitioner can make an effective representation.

Writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner (CT)
Tirupur (South) Assessment Circle
Tirupur.

+1cc to Mr.V.Srikanth, Advocate, S.R.No.64517
+1cc to the Government Pleader, S.R.No.65018

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PP(CO)
CS/16/09/2019