BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.8946 to 8949 of 2014
and
M.P.(MD)No.1,1,1 and 1 of 2014

M/s.Anand Engineering Products Pvt Limited,
Represented by its Managing Director,
Mr.K.Premanathan, Plot No.D/56,
Developed Plot Estate,
Thuvakudi, Trichy - 15. ...Petitioner in all petitions

/Vs./

The Assistant Commissioner (C.T.),
Thiruverumbur Assessment Circle (FAC),
Trichy - 20. ...Respondent in all petitions

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records comprised in the impugned orders in TIN No.33763563211 / 2006-2007, 2007-2008, 2008-2009 and 2009-2010 dated 30.04.2014 on the file of the respondent and quash the same and consequently direct the respondent to pass the order afresh in accordance with law after affording opportunity to the petitioner.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader
(in all petitions)

COMMON ORDER

These four writ petitions challenge orders of assessment, all dated 30.04.2014, in respect of the periods 2006-07, 2007-08, 2008-09 and 2009-10 in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act'). The petitioner is engaged in the business of heavy steel fabrication and caters to various multi-nationals in the fields of Wind Engineering, Mining and Construction. The petitioner executes works contract and conversion of raw materials, that is, iron and steel, in line with the technical drawings supplied by its customers to it. Separately, it also engages in the manufacture and sale of various finished products by itself, the turnover from which, it states, has been offered to tax.

2. In respect of the four years in question, pursuant to monthly returns filed by the petitioner, orders in terms of Section 22(2) of the TNVAT Act were initially passed by the respondent. A surprise inspection was conducted on 08.06.2010 by the Enforcement wing of the Commercial Taxes Department followed by notices dated 20.02.2012 proposing the levy of tax on finished goods manufactured by the petitioner on job work basis (2007-08, 2008-09, 2009-10) as well as sales suppression (2006-07, 2007-08, 2008-09).

3. The basis of the first addition was that, subsequent to the job work being carried out upon the materials supplied by the customers, the return of the finished goods to the customers was not covered by F-forms. This, according to the authorities, constituted a 'sale' of the goods intra-state, liable to tax. Replies dated 01.03.2013, 20.03.2013 and 02.04.2014 were submitted by the petitioner enclosing its financials (P and L a/c’s as well as Balance sheets) and denying the allegations contained in the pre-assessment notices. The petitioner specifically confirmed that separate accounts were being maintained in relation to the transactions relating to job works as well as independent sales.

4. The petitioner pointed out that the execution of the works contracts was entirely upon the raw materials supplied by the customers, the consumables utilized by the petitioner (paints and electrodes) had been appropriately brought to tax in terms of Section 5 of the Act and upon completion of the conversion, the finished goods would be taken delivery of by the customers, ex-factory, and transported to their destinations. Thus, at no point of time could the petitioner be termed to be the owner of the goods and such ownership vested at all times only with the customers.

5. As far as sales suppression is concerned, a common pre-revision notice dated 13.09.2013 was issued on the premise that the sales turnover was less than the purchase turnover. The petitioner, vide reply dated 24.10.2013, pointed out the flaw in the proposal that did not take into account the closing stock and labour charges. According to the petitioner, had the aforesaid items been taken into consideration, the sales and purchase turnover would stand reconciled and there would be no question of suppression, as alleged.

6. Negating the objections filed, orders of assessment were passed on 30.04.2014 that are impugned in the present writ petitions.

7. Heard Mr.S.P.Maharajan, learned counsel appearing for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government

Pleader for the respondent.

8. The issue of non-filing of F-form arises for the periods 2007-08, 2008-09 and 2009-10 and the issue of sales suppression arises in 2006-07, 2007-08 and 2008-09. As regards issue No.1, being the alleged failure of the petitioner to file F-form, the assessing authority relies upon the provisions of Section 6-A of the Central Sales Tax Act, 1956 (in short 'CST Act'). He refers to the intra-departmental MIS (Management Information System) Reports that, according to him, reveal that the petitioner has purchased raw material. Therefore, if at all an assessee claims that the raw material was utilised in the manufacture of goods that were only 'transferred' inter-state and not 'sold', the burden of establishing such movement falls entirely upon the assessee. In the present case, the petitioner has not, according to him, discharged such burden, and thus, the transactions are liable to be construed as sales only. Though he records the fact that the assessee has filed its objections and also enclosed documentary evidences in support of its stand that the transactions only constituted 'job work', he does not dwell upon either the objections or upon the evidences submitted.

9. The provisions of Section 6A of the CST Act read as follows:

> '6-A.Burden of Proof etc., in case of transfer of goods claimed otherwise than by way of sale.- (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed Form obtained from the prescribed authority, along with the evidence of despatch of such goods [and if the dealer fails to furnish such declaration, then the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale].
>
> (2) If the assessing authority is satisfied after making such enquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-

section (1) are true, he may at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.'

10. In the present case, the petitioner/assessee has submitted evidences in regard to the transactions of job work/conversion. Normally, I would, in an order relating to a writ petition, refrain from referring to factual particulars/evidences in relation to a transaction. However, in the present case, various documentary evidences admittedly filed by the petitioner in the course of proceedings have not been taken into consideration by the respondent while framing the assessments and the impugned orders. These particulars are purchase orders, delivery challans and Form-JJ. These documents prima facie indicate that the transaction was of the nature of a labour contract. There is thus, some substance in the submissions of the petitioner that its customers have supplied materials to it for conversion, such conversion has been carried out by the petitioner and the final product has been received back by the customers.

11. In such circumstances, the question of/necessity for filing form-F may not arise. However, this is the matter for appreciation by the assessing authority who, though in possession of relevant documentary evidences, has chosen to overlook the same. I thus set aside the assessments as regards this issue drawing support in this regard from a judgement of the Supreme Court in the case of Ambika Steels vs. State of Uttar Pradesh and others (Civil Appeal No.7970 of 2008). The Bench, in the aforesaid judgement, had noted the position that in the absence of a Form F being filed by the assessee (in a situation where the State commercial taxes department had not issued the same), the assessing officer will examine the transaction independently and upon its own merit.

12. The petitioner in this case has, admittedly, not filed the statutory form. The provisions of Section 6A of the CST Act that impose a burden of proof upon an assessee trigger a statutory fiction of deemed interstate sale. As per Section 6A, where the movement of goods from one state to another is occasioned by reason of transfer of such goods by the dealer to any other place of his business or to his agent or principal other than by way of sale, the burden of establishing the movement so occasioned shall be on the dealer.

13. The specific case of the petitioner is that after conversion of the raw material, the finished goods have been received ex-factory by the customer and thus, the petitioner has no control over the goods beyond its factory gate. Thus, according to

it, there arises no necessity for it to contemplate filing of Form F in these circumstances. Though the petitioner contends that it has no role in the movement of the goods to the customers' destination and that the customer has taken control of the goods at its factory gate, the delivery chalans filed at Page 5 and Form-JJ filed at Page 6 do not establish this position, since the address for despatch is marked as Puducherry and the column for acknowledgement by the recipient has been left blank.

14. There is thus no clarity with respect to this position and in the light of this, I am not inclined to accept this submission of the petitioner merely for the asking. However, if the petitioner is in a position to establish this aspect before the assessing authority, it is open to the Officer to examine the material placed in this regard and arrive at a conclusion as to whether the movement of the goods for the purposes of Section 6A was 'occasioned' by the petitioner or otherwise. A speaking order shall be passed by the Officer in this regard. If the conclusion of the authority in this regard is adverse to the petitioner, it would consequently be incumbent upon it to file the required statutory Form-F to discharge the burden of proof in terms of Section 6A of the CST Act. The authority will also take into account the evidences furnished by the assessee and come to a proper and reasoned conclusion on the aspect of whether the transaction is one of inter-state ‘transfer’ or ‘sale’.

15. As regards the second issue relating to sales suppression, though the pre-assessment proposal in this regard has been confirmed in the computation, the officer has completely lost sight of the issue in the body of the order itself. There is no discussion whatsoever in regard this issue including reference to the objections filed by the petitioner. The learned counsel for the respondent has no defense to offer in this regard, and rightly so, seeing as the impugned order is silent and non-speaking in this regard. This issue is also set-aside to be re-done de novo.

16. The petitioner has circulated various decisions in support of its stands, that I do not find the need to refer to in the light of my conclusions as above.

17. The petitioner states that these very transactions were the subject of scrutiny in assessments under the provisions of the CST Act and have been accepted to be inter-state transactions. This submission does not appear to be correct seeing as the CST assessments relate to separate and independent transactions of inter-state sales that the petitioner has, admittedly, engaged in and not to the job work/labour contracts that are at issue now. The CST assessments thus are of no assistance to the petitioner.

18. In the light of the discussion above, I set aside the assessments and these writ petitions are allowed by way of remand. The assessee will appear before the assessing officer for a personal

hearing in the matter on 17.07.2019 at 10.30 a.m and orders of assessment will be passed de novo by the assessing authority within a period of twelve (12) weeks from date of the conclusion of the personal hearing in line with the observations and directions contained above.

19. Pursuant to an order of this Court dated 06.06.2014, a sum of Rs.10,00,000/- has been deposited by the petitioner. This amount shall be subject to final orders of assessment. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner (C.T.),
Thiruverumbur Assessment Circle (FAC),
Trichy – 20.

+4 CC to M/s.S.P.MAHARAJAN, Advocate SR-73115, 73116, 73117 & 73118

+1 CC to M/s.SPL GP (SR-73819[F] dated 05/07/2019)

Common order made in
W.P.(MD)No.8946 to 8949 of 2014
Dated: 03.07.2019

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JMN(18.09.2019) 6P : 7C