BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.2669 of 2016
and
W.M.P.(MD)No.2363 of 2016

M/s.Babu Pillows,
Represented by its Proprietor,
S.Veerasamy : Petitioner

Vs.

The Commercial Tax Officer,
Karur (North) Assessment Circle,
Karur. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records in TIN No.33713661548/2011-12, dated 04.01.2016 and to quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

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ORDER

Challenging the assessment order in TIN No.33713661548/2011-2012, dated 04.01.2016, the petitioner is before this Court.

2. The petitioner is a dealer in the trade of buying and selling pillows. For the year 2011-2012, he reported a total and taxable turnover of Rs.4,40,28,224/- and Rs.4,21,14,525/- by claiming exemption on a turnover of Rs.19,12,986/-. He also filed “Form WW" showing the labour charges receipts to the tune of Rs.1,98,10,830/- during the year. The labour charges were towards filling charges. Even though it is exempted turnover, the Assessing Authority has held that the dealer has not maintained proper labour bill and filling charges received was added in the sales as per accounts; there was no freight charges available in the accounts for inward and outward movement and the petitioner has not separately shown that the filling charges are labour charges and they should be declared as exempted turnover. On these grounds, the Assessing Authority has held that the said amount also is liable to tax. Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would contend that the assessment order passed by the respondent for the year 2012-2013 on the very same issue was taken on appeal before the Tamil Nadu Sales Tax Appellate Tribunal by the petitioner and after elaborate discussion, the Tribunal has exempted the filling charges as labour charges and excepted him from paying the tax. Insofar as for the assessment year 2011-2012 is concerned, the same analogy should be adopted and that the tax liability over the exempted turnover should be set aside.

4. The learned Special Government Pleader appearing for the respondent would vehemently contend that the dealer has not properly maintained the account and he has not shown that he exempted turnover. On a cross verification of the profit and loss account, he has shown the entire sale amount as income and, therefore, it should be construed as sales as per his account and he is liable to pay tax. His claim that he exempted turnover cannot be sustained, as there is no necessity for him to bring the same to his books of accounts by exhibiting the sales receipts at the credit side of his trading account.

5. I have heard the rival submissions.

6. Admittedly, the Assessing Authority has considered the filling charges as sales. The contention of the petitioner is that it is purely a job contract and it does not involve the sales. In fact, TDS was deducted towards the amount received towards the labour charges. In fact, he is buying and selling fibre, but, in this instant, it is only a job contract and there is no sale involved. Insofar as the very same issue is concerned, for the assessment year 2012-2013 by the very same respondent, it has been accepted that the filling charges are nothing but labour charges and does not attract any definition of '**turnover**' and there cannot be any tax liability to the same. From the profit and loss account produced by the petitioner, it is separately shown as 'to filling labour charges wages paid' and on the except side towards 'filing labour charges received'. It means that the job contract has been done and that does not involve the sales. Therefore, the observation made by the Assessing Authority that it involves sale and it should be calculated in the taxable turnover is not sustainable and accordingly, the impugned proceedings dated 04.01.2016 is set aside.

7. In fine, the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

SML
To

The Commercial Tax Officer,
Karur (North) Assessment Circle,
Karur.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-90199[F] dated 27/09/2019)

+1 CC to M/s.SPL GP (SR-90869[F] dated 01/10/2019)

Order made in
W.P.(MD)No.2669 of 2016
Dated: 27.09.2019

SML
TK/SAR./06.01.2020/3P/4C