IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.15844 of 2006 and W.P MP 15614 of 2006

Tvl.Star Leathers
Rep.by its Proprietor
Mr.K.A.Abdul Majeed
Athupalam, Coimbatore. ...Petitioner

Vs.

1.The Sales Tax Appellate Tribunal,
Commercial Taxes Building
Coimbatore - 18.

2.The Additional Appellate Assistant Commissioner
(Commercial Taxes),
Coimbatore-18.

3.The Commercial Tax Officer
Perur Assessment Circle,
Coimbatore. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the first respondent in C.T.A.No.10/99 dated 25.10.2005 and quash the same insofar as the order of remand for re-examination is concerned.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.R.Swarnavel,
Government Advocate(Taxes)

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI,J.)

The Assessee M/s.Star Leathers has filed this writ petition against the order of the learned Single Judge dated 25.10.2005, by which the learned Tribunal has remanded the case back to the Assessing Authority for passing fresh Assessment Order for the reasons recorded by the learned Tribunal, in the following manner.

> " In the case on hand, it is also seen from the notice that the Assessing Authority had not made any reference to the actual entries found in the recovered records but had given only the quantity pagewise and a conclusion that the claim of job work is not acceptable. The appellants are entitled for copies of the recovered records for filing their detailed objections and the request has been negatived on flimsy grounds. Further, the claim of job work was also not accepted by the Assessing Authority on the only ground that the appellants had not produced any book, stock register for tanning of skins received, cooly bills etc., But it is to be pointed out that the record recovered at the time of inspection, itself is the registered maintained at the Branch for receipt of the Hides and Skins from other dealers for job work, and the entries also contained receipt of salt and other chemicals from such dealers for the job work. It is seen from the explanation obtained from the appellant at the time of processing that the receipt of the raw-hides and skins from other dealers for job work and the entries also contained receipt of salt and other chemicals from such dealers for the job work. It is seen from the explanation obtained from the appellant at the time of processing that the receipts of the raw hides and skins for job work from other dealers are found entered in the stock maintained and that the labour charges received had also not been entered in the Day Book. But these details had not been considered by the Assessing Authority but had concluded the entries related to purchase by observing that the connected records were not produced. In the decision reported in 111 STC 143, it has been held as follows:-
>
> > "Held, that the assessing authorities should give a little more consideration to the objections filed by dealers. They could not take a pre-judged view that the objections

> have to be overruled. The appellate authority was to give due consideration to all the facts and circumstances of the case and give proper relief."

> The first appellate authority had also not considered the above facts and dismissed the appeals which is not sustainable. We therefore set aside the order of the Assessing Authority and also the first appellate authority and remit the matter back to the Assessing Authority for re-examination. The Assessing Authority is directed to examine the whole issue again with reference to the records, afford sufficient opportunity to the appellants and then pass orders."

2. Learned counsel for the appellant Mr.Senniappan submitted that, since the learned Tribunal has recorded the findings in favour of the Assessee, the Assessing Authority could not deviate from those findings and therefore, the remand made by the learned Tribunal is unjustified and therefore the Assessee has come before this Court by way of the present writ petition, challenging the order passed by the Tribunal.

3. Per contra, Mr.Swarnavel, learned Government Advocate (Taxes) supported the impugned order and urged that the Assessee himself had been seeking opportunity to adduce evidence before the first appellate authority as well as before the Tribunal, and therefore the order of remand passed by the learned Tribunal is perfectly in consonance with the requirements of the case and therefore, the Assessee cannot challenge such remand by way of the present writ petition.

4. Having heard the learned counsel for the parties, and after having gone through the records, particularly the reasons recorded by the learned Tribunal for such remand, we are satisfied that the remand was justified in the facts and circumstances of the case, and it gives an opportunity to the Assessee to adduce relevant evidence before the learned Assessing Authority once again and establish that the transactions in question were only job work and not taxable sales made in the hands of the Assessee. Although a remand after so many years may give rise to a difficulty on the part of the Assessee to adduce evidence, it seems that in the present case, records were seized by the Assessing Authority through a search made at the premises of the Assessee, which the learned Tribunal has noted in the aforesaid portion of the order, and has expected the Revenue Authorities to supply copies of the same to the Assessee and then prove its case in accordance with law.

5.Therefore, in these circumstances, the remand at this belated stage also cannot be faulted, and accordingly we dispose of the present writ petition with a direction to the Assessing Authority to undertake the said remand proceedings and conclude the same as expeditiously as possible within six months from today. The Assessee may appear before the Assessing Authority, at the first instance on 08.04.2020.

6. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.The Sales Tax Appellate Tribunal,
Commercial Taxes Building
Coimbatore - 18.

2.The Additional Appellate Assistant Commissioner
(Commercial Taxes),
Coimbatore-18.

3.The Commercial Tax Officer
Perur Assessment Circle,
Coimbatore.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.24372

+1cc to the Government Pleader(Taxes)High Court, Chennai, S.R.No.24001

W.P.No.15844 of 2006

BC(CO)
RN(29/05/2020)