IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.02.2020

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.27152 OF 2004

M/s.C.P.G.Textiles,
Naranapuram,
Palladam,
Coimbatore ... Petitioner

versus

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Coimbatore

2. The Appellate Asst. Commissioner (CT)
Pollachi

3.The Commercial Tax Officer,
Tirupur Rural Circle ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the file of the first Respondent in C.T.A.No.77 of1996 on its file, quash the proceedings dated 24.12.1999 passed therein and further direct the third Respondent herein to refund the tax and penalty collected from the Petitioner based on the findings of the Central Excise Department, which are now held to be illegal by the CESTAT by its final order No.460/2004 dated 8.6.2004.

For petitioner : Mr.Ravindran

For Respondents : Mr.Mohammed Shaffiq, Spl.G.P.

O R D E R
(made by Dr.VINEET KOTHARI, J.)

The Assessee has filed this writ petition against the order of the learned Tamil Nadu Sales Tax Appellate Tribunal dated 24 December 1999 whereby the learned Appellate Tribunal upheld the assessment of the undisclosed turnover on the basis of 5559 Kgs of alleged clandestine removal of goods made by the Assessee, which was not recorded in RGL Register by the Assessee maintained under the Central Excise Law. The relevant finding of the learned Appellate Tribunal as recorded in paragraph 6 are quoted below for ready reference :-

“6. We have heard the arguments of both the sides and perused the connected documents. Our careful perusal of the documents would indicate that the appellants had received the goods as mentioned in the earlier paragraphs on 2.12.93 to the extent of 5559 kgs without taking into account in the RGL Register and without deducting the removal of 5559 kgs, the Appellants sold the goods to the dealers within the State. Obviously, the Appellants had with a motive to evade the payment of taxes, removed the goods from their factory, sent the goods and sold the same to the buyers. The careful perusal of the appeal file would indicate that what is shown as sale bill does not relate to the goods actually removed from the factory premises. Even though the Appellants had attempted to show the same invoices, such invoices do not relate to the actual goods which are shown to have been detected by the Central Excise authorities. There was a statement given by Thiru.A.Srikanthan, S/o Ananda Mohan, residing at no.27, Kuttappalli colony, Thiruchengode) to the effect before the Inspector of Central Excise Divisional Preventive Unit, Erode Division, Erode on 23.12.93 at Vijayamangalam. On that occasion, it was shown to have been pointed out that the van TAN 6579 was intercepted at Vijayamangalam and enquiries would show that the van was found to have been loaded with 25 bags of 42 counts cotton yarn for the purpose of delivery to Mr.Selvamani, Tiruchengode and while delivering the goods, the invoices bearing sl.no.82 and 83 dated 23.12.93 was found to have accompanied the goods. He admitted that the cotton yarn manufactured by Tvl.C.P.G. Textiles, Palladam was brought to M/s.Murugan Textiles and he has no invoice pertaining to that transactions. Consequent to the above statement, the perusal of the R.G.L. Register maintained by the appellants would show that on the date of interception on 23.12.93, there was no removal of goods from the factory was shown to have been entered in the R.G.L. Register. Even at this stage of appeal, the Appellants have not come forward with positive evidences to show any recorded evidences to disprove the remarks shown in the assessment order and against the observation given by the learned Appellate Assistant Commissioner. On facts, the Appellants have failed to disprove the reasons stated in the assessment order. On merits, we therefore have no hesitation in holding that the Appellants had suppressed the turnover from being disclosed in the returns and therefore uphold the assessment on the disputed turnover."

2. The learned Counsel for the Assessee submitted that later on, in a contest put up by the Assessee before the Excise Authorities below, up to CESTAT, the learned CESTAT, vide order dated 8 June 2004, has granted relief to the Assessee with regard to the said alleged clandestine removal of the goods in the following manner. The operative portion of paragraph 8 of the said order passed by the CESTAT is also quoted below for ready reference :-

"(a) The aspect with regard to demand of duty of Rs.3,959/- on 1275 Kgs of cotton yarn is remanded for verification as to whether the duty has already been paid on it, as contended by the Appellants.

(b) Duty of Rs.85,543/- demanded on post clearance is set aside.

(c) Duty of Rs.13,302/- demanded on 85 bags is set aside. Redemption fine of Rs.20,000/- imposed on 85 bags (4284 Kgs) is also set aside.

Ordered accordingly."

3. The learned counsel for the Assessee submitted that as far as the issue relating to 1275 kgs is concerned, the learned Tribunal has remanded the case back to the Adjudicating Authority to verify as to whether the Excise Duty thereon has been paid by the Assessee or not. But as far as the other lot of 4284 Kgs is concerned, he submitted that the demand raised by the Assessing Authority has been set aside by the learned CESTAT. The total of these two lots viz., 1275 + 4284 (total 5559 Kgs) is the alleged clandestine removal, which has been taxed by the Assessment Order dated 26.12.1994.

4. Since the order of the CESTAT under Central Excise law has apparently been passed after about 10 years of the impugned assessment order under TNGST Act, which was passed on 24 December 1999, in our opinion, the matter deserves to go back to the Assessing Authority for redetermining the issue about clandestine removal/ unaccounted sales made by the Assessee and the absence of entries in RGL Register in the facts of the present case.

5. Accordingly, we set aside all the three orders passed by the Authorities below under TNGST Act to this extent and remand the case back to the Assessing Authority for verifying the facts and after taking into account the findings of the learned CESTAT and their impact on the assessment order under the Tamil Nadu General Sales Tax Act as passed by the learned Assessing Authority on 26 December 1994. The Assessee may appear before the Assessing Authority on the first instance on 4 March 2020 and produce the relevant evidence before the said authority, who may pass fresh order to this extent, after giving an opportunity to the Assessee.

6. With this observation, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Coimbatore

2. The Appellate Asst. Commissioner (CT)
Pollachi

3.The Commercial Tax Officer,
Tirupur Rural Circle.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 10369

W.P. No.27152 OF 2004

A.SK(11/03/2020)