IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.11529 & 11530 of 2018
and
W.M.P. Nos.13474 & 13475 of 2018

TJSV Steel Fabrication and Galvanizing (India) Ltd.,
(Represented by its Manager (Administration),
Mohankumar, Kondampatti (P.O), Gudimangalam,
Udumalpet - 642 201
.... Petitioner in both Wps

vs

1.The Assistant Commissioner (CT),
Udumalpet North Circle, Udumalpet.

2.The Appellate Deputy Commissioner (ST) (FAC),
Pollachi.
.... Respondents in both Wps

PRAYER in W.P. No.11529 of 2018: PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the files of the First Respondent herein in TIN:33642482503/2012-13, dated 16.04.2018, quashing the same.

PRAYER in W.P. No.11530 of 2018: PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus, directing the First Respondent herein to defer any further assessments in respect of the assessment years TNVAT 2013-14 and 2014-15 as proposed in TIN: 33642482503/2013-14 and TIN: 33642482503/2014-15, dated 08.12.2017 and as prayed for by the Petitioners in their application dated 19.04.2018, pending disposal of the appeal filed by the Petitioners before the Second Respondent herein for the assessment year TNVAT: 2010-11 and now numbered as A.P.VAT.27/2018 and listed for hearing before the Second Respondent on 02.05.2018.

For Petitioner : Mr.N.Prasad in both WPs.

For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader in both WPs.

COMMON ORDER

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader for the respondents.

2. W.P. 11529 of 2018 challenges an order of assessment for the period 2012-13 and W.P. No.11530 of 2018 challenges pre-assessment notices for the periods 2013-14 and 2014-15.

3. Admittedly, the identical issue as arising in the present impugned assessment order and show cause notices had arisen for the earlier two periods 2010-11 and 2011-12 and as against the orders of assessments for those two years, appeals were filed by the petitioner before the first Appellate Authority.

4. The petitioners' appeals for both years as aforesaid were allowed in VAT Appeal No.27 of 2018 for 2010-11 by order dated 30.05.2018 and VAT Appeal No.69 of 2018 for 2011-12 by order dated 01.08.2018.

5. The relevant portion, relating to the issue of taxability and quantification of receipts from the job works of galvanization has been considered and allowed in the following terms.

> 'I have considered the same. It is an admitted fact that the dealer-appellants have undertaken job work of galvanization of the fabricated materials supplied by the customers from both local and other states. With respect to work undertaken to local registered dealers the dealer-appellants have reported the 2/3rd of contract receipts as material cost and paid tax at 4% to the value of Rs.89,92,717.00 and claimed deduction for the remaining 1/3rd as pure labour charges. With respect to composite works contract the States are provided with the power to levy tax on the materials invloved in the execution of works contract. The process of galvanization invloves coating of zinc on the

fabricated materials supplied by the customers where the zinc and other chemicals are transferred in the execution of works contract. But the deemed provision of manufacture provided under Central Excise Tariff Act would not be applicable as rightly stated by the Authorised Representative. Therefore the order of the Assessing Authority making assessment on the entire contract receipts by treating the galvanization process as manufacture and as outright sale is liable to be set aside since it is not legally tenable. In view of the above the action of Assessing Authority adding labour charge receipt of Rs.61,01,560.00 to the taxable turnover is ordered to set aside. Then it is questioned by the Authorised Representative that the Assessing Authority made levy of tax at higher rate of 12.5% when the zinc is taxable at 4% as per Entry No.89(1) of Part-B of I Schedule to the Act and the other chemicals involved is also taxable at 4% as Entry No.1 of Part-B of I Schedule. This has been considered and the zinc is non-ferrous metal which is taxable at 4% only and the chemicals are also taxable at 4% as rightly pointed out by the Authorised Representative. Therefore the action of the Assessing Authority making higher rate of tax at 12.5% is also liable to set aside.'

6. The Revenue has filed an Appeal against the aforesaid order before the Tamil Nadu Sales Tax Appellate Tribunal. Thus, both Writ Petitions are allowed and the impugned order for 2012-13 is set aside The proceedings for assessment for the period 2012-13 as well as the show cause notices for the later two years will be kept in abeyance till disposal of the Revenues' appeal by the Tribunal. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT),
Udumalpet North Circle, Udumalpet.

2.The Appellate Deputy Commissioner (ST) (FAC),
Pollachi.

+1cc to the Special Government Pleader Sr.930
+1cc to Mr.N.Inbarajan, Advocate Sr.594

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ssd[co]

srg 21/02/2020