IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.10.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.A.No.885 of 2020
and
C.M.P.No.10972 of 2020

M/s.Jayam Garments,
rep.by its Partner Mr.Mohammed Ibrahim
No.37, Vivekanandha Nagar,
Prema School Backside Sirupuluvapatti (PO),
Tiruppur 641 603. .. Appellant

Versus

The State Tax Officer,
Central II Assessment Circle,
Tiruppur-II, Tiruppur. .. Respondent

Prayer:
Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.7.2020 in W.P.No.8569 of 2020 passed by this court.

W.P.No.8569 of 2020:-
Petition filed under Article 226 of the Constitution of India, praying Writ of certiorari to call for the records pertaining to the impugned order dated 09.02.2017 in Tin/33892466118/2014-15 and demand notices in Form-o dated 09.02.2017 and Form-RR, dated 09.02.2017 issued by the respondent and quash the same as unconstitutional and illegal and consequently direct the respondent to refund the amount Rs.15,39,460/- to the petitioner.

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For Appellant : Mr.K.Ravi

JUDGMENT
(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

This intra-court Appeal has been filed by the Assessee against the order dated 29.7.2020 passed by the learned Single Judge allowing the Writ Petition of the Assessee in W.P.No.8569 of 2020 (M/s.Jayam Garments v. The State Tax Officer) and directed the Assessing Authority to redo the assessment and complete the same on merits and in accordance with law after hearing the Petitioner within 3 months from the date of receipt of the order.

2. Finding a breach of principles of natural justice before passing the impugned order of assessment on 9.2.2017 which was passed in pursuance of the earlier notice dated 1.9.2016, the said order was passed by the learned Single Judge.

3. The learned counsel for the Appellant Mr.K.Ravi submitted before us that it was not a case of assessment of the whole turnover of the Assessee, but, the notice dated 1.9.2016 as well as the order dated 9.2.2017 both were never served on the Assessee in the contemporary period and that was the reason for the Assessee approaching this court by way of Writ Petition.

4. We have perused those documents and the order of the learned Single Judge. We are not inclined to interfere with the order passed by the learned Single Judge in any manner because the allegation of breach of principles of natural justice made by the Assessee has already been found in favour by the learned Single Judge in the impugned order passed by setting aside the order dated 9.2.2017 which was passed after the Show Cause Notice dated 1.9.2016.

5. A perusal of those documents indicates that they were to recover the Tax Deducted at Source by the Assessee from the payments made by the Assessee to the various sub-contractors listed in the said Notice dated 1.9.2016 and the said amount of TDS alongwith penalty at the rate of 150% was sought to be recovered from the Assessee under the aforesaid impugned notice and order. It was also brought to our notice that the said amount was, in fact, recovered from the Assessee by way of Garnishee Proceedings from the Bank of the Assessee and the amount stood realised by the Assessing Authority. When challenge was raised before the learned Single Judge, the Petitioner/ Assessee was able to satisfy the learned Single Judge that the notice and the impugned order were never served on the Assessee and therefore, opportunity of hearing was not given to the Assessee.

6. Since the matter has been remanded back to the Assessing Authority to give an opportunity of hearing to the Assessee on this ground, there is no reason to interfere with the said order, which is essentially in favour of the petitioner only. Apparently, the remand order is only for looking into the issue of TDS made by the Assessee and deposit or recovery thereof. It goes without saying that the TDS made by the Assessee from the payment made to the sub-contractors listed out in the notice dated 1.9.2016 being the Government money, cannot be retained by the Assessee and if there is a delay in depositing of the same

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without a reasonable cause, then, penalty can also be imposed by the Revenue Authority concerned. However, since no opportunity of hearing was not given by the Assessing Authority with regard to penalty to be imposed at 150%, which naturally needs to be given, the learned Single Judge has rightly and fairly set aside the order dated 9.2.2017 and has remanded the matter to the Assessing Authority for deciding that aspect of the matter. The same does not require interference by this court in the present Writ Appeal.

7. We, therefore, direct the Assessee to appear before the Assessing Authority in the first instance on 21.10.2020 at 11.00 am and we further direct the Assessing Authority to pass appropriate orders after hearing the Assessee as early as possible, preferably within one month thereof.

8. A sum of Rs.15,39,460/- said to have been recovered through Bank Account of the Appellant/Assessee, will remain subject to the fresh orders to be passed by the Assessing Authority and further Appellate orders in the Departmental Appeals, if any.

With this observation, the Writ Appeal is disposed of. No costs. The connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

To:

The State Tax Officer,
Central II Assessment Circle,
Tiruppur-II, Tiruppur.

W.A.No.885 of 2020

MP(CO)
CS/13/10/2020

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