

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.A.No.344 of 2021
and
C.M.P.No.1382 of 2021

Tvl.Space Textiles Pvt. Ltd.,
Represented by its Director,
No.783-D, White Field,
New Dhamu Nagar,
Panappanaickenpalayam,
Coimbatore - 641 307 ...Appellant

Vs

Deputy Commissioner (ST) (FAC),
Divisional Large Tax Payers Unit,
Coimbatore - 641 018. ...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge passed in W.P.No.30230 of 2018 dated 08.12.2020.

Prayer :Writ petition filed Under Article of 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Respondent in order dated 01/10/2018 in TIN 33071782137/2014-2015 and quash the same.

For Appellant : Mr.Adithya Reddy

For Respondent: Mr.Md.Shaffiq
Special Government Pleader

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

We have heard Mr.Adithya Reddy, learned counsel for the appellant and Mr.Mohamed Shaffiq, learned Special Government Pleader appearing on behalf of the respondent.

2. This appeal is directed against the order dated 08.12.2020 passed in W.P.No.30230 of 2018, which was filed by the appellant, challenging the order of assessment dated 01.10.2018 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act') for the assessment year 2014-15. The writ petition was dismissed holding that the appellant should exercise the alternative remedy available under the Act.

3. It is the submission of the learned counsel for the appellant that the assessment order, which is impugned in the writ petition, is wholly without jurisdiction for the reason that the respondent herein has demanded reversal of Input Tax Credit (ITC) under Section 19(9)(iii) on the basis that the appellant is not eligible to claim ITC with regard to wastage of inputs in making of jewellery and such a demand goes against the very scheme of the TNVAT Act. Further, the learned counsel placed reliance on the decision in the case of Rupa & Co. Vs. CESTAT [2015 (324) ELT 295 (Mad)]. Further, it is contended that the loss of input as part of the manufacturing process cannot be termed as loss resulting in the exclusion of such input from the final product. Such inputs very much contribute to the final product. It is submitted that Section 19(9) does not cover manufacturing loss of inputs, but only the loss as a result of any reason other than manufacturing itself. The learned counsel further submitted that no jewellery can be made without wastage of input such as gold and the reversal of ITC claimed on such input is in violation of Section 19(9) of the Act as well as the basic scheme of Value Added Tax. It is the further submission of the learned counsel that the contention placed by the appellant is supported by the use of preposition "at" in the second limb of Section 19(9)(iii), i.e., "destroyed at some intermediary stage of manufacture" and use of the prefix "inter" used in "intermediary stage" and use of the expression "destroyed". Further, it is submitted that these words would indicate that there must be more than one stage in a manufacturing process and the "output" of the previous stage, which is used as input in the next stage, is destroyed in that manufacturing process and this is not applicable to the appellant's case. Further, reliance is sought to be placed on the decision of this Court in the case of M/s.Ran India Steel Vs. Principal Secretary made in W.P.No.3172 of 2014, dated 04.12.2019. Based on the above submissions, it is contended that a question of law could arise for consideration in this appeal and the Court may entertain the appeal.

4. The learned Special Government Pleader appearing for the respondent submitted that the appellant should not be permitted to bypass the appeal remedy available under the TNVAT Act and

all issues which have been raised are entirely factual and prays for sustaining the order passed in the writ petition.

5. We have carefully considered all the submissions made on either side and perused the materials available on record.

6. After going through the Show Cause Notice dated 08.10.2015, the reply given by the appellant dated 12.11.2015 and the assessment order dated 01.10.2018, we find that the appellant, for the first time before this Court, seeks to canvas the above grounds. The Assessing Officer, while completing the assessment, has taken note of the objections given by the appellant dated 12.11.2015 as well as the reply dated 12.09.2018 and 14.09.2018 and has held that the appellant was given a chance to produce the ledger extract adopted to the value of melting loss, but however, the appellant themselves accepted that there is manufacturing loss in the reply dated 20.11.2015 and therefore, the percentage, which was proposed in the Show Cause Notice was adopted and the assessment was revised accordingly.

7. We find that the contention now raised before us was never canvassed in the same form before the Assessing Authority. That apart, we find that the contention now advanced before us, which we have set out above, are not pure questions of law, but intermingled and interlaced with the factual issues. Therefore, in a writ petition, we cannot adjudicate the same and the appellant has to necessarily avail the remedies available under the Act. To that extent, we agree with the findings of the learned Single Bench in the impugned order. However, we find that the issue which was canvassed in the writ petition, which was filed in the year 2018, though not raised in the same form before the Assessing Officer, it is yet an issue which needs to be considered as the appellant feels that if the interpretation given by the Assessing Officer is allowed to stand, it will have a cascading effect on the appellant.

8. Thus, taking note of the same, we are of the view that one more opportunity can be given to the appellant to go before the Assessing Officer to set out the grounds raised before us along with the relevant facts. However, such liberty will be granted subject to certain conditions.

9. For the above reasons, while agreeing with the observations of the learned Single Bench that alternative remedy should be availed in cases arising under the taxing statute, we find that the points canvassed in the writ petition needs to be first adjudicated by the Assessing Authority, after taking note of the factual position. Therefore, we are inclined to remand the matter subject to certain conditions.

10. Accordingly, the Writ Appeal stands allowed and the order passed in the writ petition is set aside. The appellant is directed to pay 15% of the disputed tax within a period of 8 weeks from the date of receipt of a copy of this judgment and if the said condition is complied with within the time framed by this Court, then the appellant could be entitled to treat the assessment order dated 01.10.2018 as a Show Cause Notice and submit their reply to the same, which shall be considered by the Assessing Officer and a fresh decision shall be taken on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Deputy Commissioner (ST) (FAC),
Divisional Large Tax Payers Unit,
Coimbatore - 641 018.

+1cc to Mr.ADITHYA REDDY, Advocate, S.R.No.5966
+1cc to the Special Government Pleader, Highcourt, Madras,
S.R.No.6358

VSN11(CO)
SM/03/03/2021

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