IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NOS.10540 TO 10543 OF 2005

M/s.Jaihind Mills
Rep by its Proprietor
K. Manthrachalam
No.14-A, LRG Layout 3rd Street
ABT Road, Karuvampalayam
Tirupur – 4 ...Petitioner in all WPs.

Versus

1. The Tamil Nadu Sales
Tax Appellate Tribunal (Addl. Bench)
Coimbatore - 18

2. The Appelllate Assistant
Commissioner (CT),
Coimbatore

3. The Deputy Commercial Tax Officer
Tirupur (South) Circle
Tirupur ...Respondents in all WPs.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Certiorarified Mandamus, calling for the records on the file of the first respondent in his orders in CTA Nos.254, 255, 256 and 257 of 2001 dated 12.10.2004 and quash the same.

For Petitioner : Mrs.R.Hemalatha
in all the writ petitions

For Respondents : Mr.NRR.Arun Nataraj
Special Government Pleader
in all the writ petitions

COMMON ORDER

(Order of the Court was delivered by R. Mahadevan, J.)

Calling in question the order dated 12.10.2004 passed by the first respondent / Tamil Nadu Sales Tax Appellate Tribunal, in C.T.A. Nos. 254, 255, 256 and 257 of 2001, relating to the assessment years from 1995-96 to 1998-99, the petitioner / assessee has come up with these writ petitions.

2.The petitioner is an assessee on the file of the third respondent herein. They are one of the government recognised exporters and are exporting garments to various foreign countries. While so, the place of business of the petitioner was inspected by the Enforcement Wing Officials on 05.08.1999 and they verified the disposal of special import licences, details of quota allotment etc. and also recovered 5 slips relating to the business transactions. Based on the report filed by them, the petitioner was finally assessed by the third respondent on 28.07.2000 determining the total and taxable turnover at Rs.47,62,268/- Rs.54,00,919/-, Rs.1,73,84,058/- and Rs.28,96,371/- for the respective assessment years in question and levying tax for the same, besides penalty under section 12 (3)(b) of the TNGST Act. According to the third respondent / assessing officer, the petitioner had indulged in 'quota sales' at the prevailing market rate which resulted in sales suppression. Challenging the same, the assessee preferred appeals before the second respondent, stating that 'quota sales' are liable for exemption under Section 5 (3) of the TNGST Act. The second respondent, by order dated 25.06.2001, remanded the matter back to the third respondent for fresh consideration. Aggrieved against the same, the petitioner went on second appeal before the first respondent / Tribunal. By order dated 12.10.2004, the first respondent also affirmed the order of remand passed by the second respondent. Therefore, the petitioner is before this court with the present writ petitions.

3. The learned counsel for the petitioner contended that the quota purchase is allotted by Apparel Export Promotion Council and the export of the garments is regulated by the said council. The garments were sold only to the actual exporter, who has to utilise the quota within the allowable time. The Assessing officer misconstrued the quota sales as that of a case of 'right to use' under Section 3A of the Act, where the seller has to retain the ownership, whereas in the case of quota sales, the garments sold will not come back from the transferee to transferor after its utilisation. The learned counsel further contended that with regard to the alleged purchase suppression, under Section 7A (1) (b) of the TNGST Act, the purchased quota was utilised for the export of goods to foreign countries and hence, the liability under Section 7-A is not attracted to the present case. Such being the legal position, the second respondent as well as the first respondent, instead of allowing the appeals filed by the petitioner, remanded the matter back to the third respondent for fresh consideration, which is unwarranted. Stating so, the learned counsel prayed for allowing the writ petitions.

4. Heard learned Special Government Pleader (Taxes) appearing for the respondents, who made his submissions to support the orders impugned herein.

5. This court has also perused the materials available on record.

6. On a perusal of the order passed by the First Appellate Authority, it could be seen that after dealing with the various contentions raised on behalf of the petitioner herein, it was stated in paragraph 5 that the petitioner furnished certain particulars along with its explanations, for the first time. After having observed that section 7A assessment cannot be made on the purchases from the other state dealers and also on the purchases made from local registered dealers, and the petitioner already filed elaborate details along with the registration certificate numbers of the local registered dealers, the First Appellate Authority was of the view that those registration certificate numbers are to be verified by the assessing officer only and the purchases made from unregistered dealers can be assessed under section 7A(1)(b) of the Act. The order of the First Appellate Authority would further reveal that due to non-production of relevant details, the assessing officer has not given the details of quota sales figures and the persons to whom sold, the actual suppression etc. Therefore, in the absence of detailed particulars regarding the actual quota sales made, the Appellate Authority accepted the contention raised by the petitioner and remanded the matter back to the Assessing Authority for fresh consideration. The conclusion so arrived at by the second respondent was affirmed by the first respondent/Tribunal. This court also finds no reason to differ with the view taken by the First Appellate Authority as affirmed by the Tribunal.

7. Therefore, the writ petitions filed by the assessee fail and are accordingly, dismissed. The third respondent /assessing officer is directed to comply with the directions issued by the First Appellate Authority in his order dated 25.06.2001 in AP Nos. 632, 633, 634 and 635 of 2000, and pass appropriate orders, on merits and in accordance with law, after affording opportunity to the petitioner for production of documentary evidence, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

dhk/rsh

To

1. The Tamil Nadu Sales
Tax Appellate Tribunal (Addl. Bench)
Coimbatore - 18

2. The Appellate Assistant
Commissioner (CT),
Coimbatore

3. The Deputy Commercial Tax Officer
Tirupur (South) Circle
Tirupur.

+1cc to M/s.R.Hemalatha, SSC Sr.No.63895

+1cc to the Special Government Pleader (Taxes) Sr.No.64174

W.P.Nos.10540 to 10543 of 2005

SRA(CO)
RVM(27/01/2022)