IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos. 2883, 2886 & 2889 of 2019
and
W.M.P.Nos. 3139, 3141, 3144, 3147, 3148 & 3149 of 2019

M/s. Salora International Limited,
represented by its Director
Gopal Sitaram Jiwarajka .... Petitioner in all W.P.s

-Vs-

1. The Appellate Deputy Commissioner (ST)(FAC)
Chennai – Central,
III Floor, PAPJM Building Annex,
No.1, Greams Road, Chennai-600 006.

2. The Assistant Commissioner of State Taxes,
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greams Road, Chennai-600 006. .... Respondents in all W.P.s

Prayer in W.P.No. 2883 of 2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, call for the records of the 1st respondent in APC No.37/2015 and quash the order dt. 16.05.2018 passed therein.

Prayer in W.P.No. 2886 of 2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, call for the records of the 1st respondent in APC No.38/2015 and quash the order dt. 16.05.2018 passed therein.

Prayer in W.P.No. 2889 of 2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, call for the records of the 1st respondent in APC No.39/2015 and quash the order dt. 16.05.2018 passed therein.

In all W.Ps.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Ms. Richardson Wilson, Additional Government Pleader

COMMON ORDER

Since the issue raised in all these writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The petitioner was an assessee under the erstwhile TNVAT Act (In short 'the Act') and also under the CST Act. In respect of the claim of input tax credit and payment of tax for the taxable turnover for the Assessment Years 2006-07, 2007-08 and 2008-09, there was reassessment, under which a taxable turnover of Rs.1,19,19,927/- was levied tax at 12.5% and there was a reversal of input tax credit for Rs.11,230/-.

3. In this context, it is to be noted that, in the assessment orders which were passed sometime in the year 2014, there were three issues which were under consideration by the assessing authority. The first issue was the interstate sales with

'C' Form for which only 3% tax was levied and there was interstate sale without 'C' Form for which 4% tax was levied. Apart from that, there was interstate stock transfer with Form 'F' for which the forms were supplied or filed by the petitioner under Section 6A of the CST Act to the tune of Rs.12,90,61,155/-. However, according to the Revenue there was no such Form 'F' filed about the stock to the extent of Rs.1 Crore and odd and therefore, in respect of which the said stock transfer was considered to be an interstate sale and accordingly tax was levied.

4. As against the said order of assessment dated 30.12.2014, the petitioner dealer filed appeal / revision before the Deputy Commissioner under Section 51 of the VAT Act. The said appeal was heard and disposed of on 16.05.2018.

5. It is to be noted that, before the appellate authority, even though the appeal was filed by the petitioner, none had appeared and this was recorded by the appellate authority. However, the department representative appeared and he argued the case that the order of assessment which was under appeal is to be sustained.

6. Ultimately, after having considered the merits of the case, the appellate authority has found that, even though appeal was filed for the taxable turnover of Rs.1,19,19,927/- treating the alleged interstate stock transfer as interstate sale and levied the tax at 12% and also reversal of input tax credit for Rs.11,230/-, the Form 'F'

submitted for the remaining amount of Rs.12,57,48,663/- also was not in consonance with Section 6A of the CST Act read with Rule 12, as majority of the columns were not duly filled up and therefore it cannot be treated as interstate stock transfer to the extent of more than Rs.12 Crores. Hence, the appellate authority has passed the following order on 16.05.2018, remanding the matter back to the assessing authority.

> " *The Assessing Authority has simply accepted the form F filed for Rs.12,57,48,663.00 without recording any findings that the goods were actually moved to other state from their place of business and whether the appellants have produced sufficient records to establish that the movement of goods are covered by proper documents such as transport goods consignment notes and the vehicle Nos and whether the goods were actually received in other state and further whether assessment was made on the turnover relating to stock transfer, by the respective assessment circle in other state. In the circumstances, and the fact found on verification of documents, I consider that the assessing authority has passed the impugned order without proper verification of the records, as required in Sec 6A of CST Act. However, I uphold the levy of tax on Rs.1,19,19,927.00 @ 12.5% with direction to the Assessing Authority to re-examine the entire turnover of Rs.13,76,68,590.00 relating to stock transfer, in accordance with the above direction.*
>
> *The appellants wee granted stay in APC 37/15 dated 07.04.2015 till 06.10.2015. Therefore, the stay automatically stands vacated and hence the assessing authority is directed to proceed to collect the balance amount, as per law.*

As regards the reversal of ITC, the Assessing Authority did not record any reason for it and further the ITC cannot be reversed under CST Act. Therefore I set aside the reversal of ITC for Rs.11,230.00/- and order for its deletion. With these findings, the appeal on the reversal of ITC is allowed."

7. Challenging this order for the three assessment years, the present writ petitions have been filed with the respective prayers.

8. Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner dealer who would submit that, though under Section 51 of the VAT Act the appellate authority is empowered to modify or enhance or reduce the tax liability as per the orders of the assessing authority and even to set aside and remand the matter back to the assessing authority for reconsideration, insofar as the present cases are concerned, if at all the appellate authority was not satisfied with the Form 'F' filed by the petitioner for interstate stock transfer to the extent of Rs.12 Crores worth of goods, such an opportunity should have been given to the petitioner dealer to withdraw those forms and to file duly filled in forms within the meaning of Section 6A of the CST Act.

9. Without giving such an opportunity to the petitioner to replace the forms duly filled in by returning the existing forms, a direction was given as if that the 'F' forms filled by the petitioner were defective, and an omnibus direction was given to

re-assess the entire assessment by evaluating the entire 'F' forms filed by the petitioner. Therefore, that is prejudicial to the interest of the petitioner without giving a chance of rebutting the same as to the veracity or otherwise of the 'F' Forms in respect of Rs.12 Crores and odd stock transfer.

10. She would also submit that, in view of those findings in the remand order which is impugned herein, the assessing authority cannot independently decide the re-assessment as directed by the appellate authority and in this process, even if the petitioner asked for returning of the 'F' forms already been filed enabling the petitioner dealer to re-submit the duly filled in 'F' Forms that cannot be accepted by the assessing officer as that kind of specific direction since was given by the appellate authority. Therefore, even on that ground also, the impugned order would be prejudicial to the interest of the petitioner, as the petitioner may not get a fair assessment before the assessing officer in view of the appellate authority's order.

11. Per contra, Mr.Richardson Wilson learned Additional Government Pleader appearing for the respondents, produced the list of 'F' Forms which are in question, where, in some of the 'F' Forms majority of the columns were filled in and in some of them, only half of the columns were filled in and in some of the forms very minimum columns were filled in. Therefore, all those forms cannot be treated as duly filled in 'F' Forms within the meaning of Section 6A of the CST Act, he contended.

12. Even though the appeal was filed by the petitioner dealer only in respect of the denial of 'F' Forms or denial of treating the interstate stock transfer to the extent of Rs.1,19,19,927/-, the entire 'F' forms since has been considered by the appellate authority, a remand order has been passed for which the appellate authority is empowered under Section 6A of the VAT Act.

13. He would also submit that, if at all the petitioner wants to get back the disputed 'F' Forms, it would be possible for the petitioner to make such a claim before the assessing officer and once such a claim is made, the 'F' Forms may be produced before the assessing officer so that the re-assessment process in entirety of the 'F' Forms for the whole amount claimed by the petitioner is interstate stock transfer can be effectively considered and assessed. Hence, the learned Additional Government Pleader would contend that, the impugned order passed by the appellate authority since is only a remand order, that does not require any interference from this Court, as no modification whatsoever as claimed by the petitioner's counsel need to be made.

14. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

15. Though the appeal was filed by the petitioner before the appellate authority only for limited scope, in entirety of the assessment, where a major portion of the claim made by the petitioner was allowed by the assessing authority, also has been considered and the appellate authority has expressed its view that the assessing authority, without considering the entire 'F' forms submitted by the petitioner dealer has come to the conclusion that, major portion of the claim made by the petitioner that those stocks were transferred interstate, for which unfilled or partly filled 'F' Forms were filed and accepting the same, such a finding was given. Therefore, the appellate authority, by exercising its power which is vested under Section 51 of the Act, set aside the entire assessment order and remitted the matter back to the assessing officer for reassessment by going through the entire 'F' Forms filed by the petitioner.

16. In this context, it is to be noted that once the 'F' Forms in question are defective, it is open to the assessing authority to return back the same to the petitioner dealer and if the petitioner dealer is ready and willing to take back the same and to file the duly filled in Forms with all necessary particulars as contemplated under Section 6A of the CST Act, that exercise would be possible at the end of the assessing authority.

17. Hence, unmindful of the direction given by the appellate authority at the second portion of Para 4 of the impugned orders ie., the orders of remand, independently the assessing authority can consider the plea of the petitioner dealer for returning back the disputed 'F' Forms by giving time to the petitioner dealer to duly fill in the 'F' Forms and thereafter the re-assessment process can be proceeded and completed at the end of the Assessing Officer.

18. In that view of the matter, these writ petitions are disposed of with the following order.

- That the assessing authority is hereby directed to consider the plea to be raised by the petitioner for returning back of the disputed 'F' Forms and if such a plea is raised, the same shall be considered and the disputed 'F' Forms or defective 'F' Forms shall be returned back to the petitioner dealer on condition that the petitioner dealer shall file the duly filled in 'F' Forms within a time frame within 30 days from the date of such order to be passed by the assessing authority.

- Within the said 30 days, it is open to the petitioner to file the duly filled in 'F' Forms for the entire claim with regard to the interstate stock transfer for the three assessment years and after filing the duly filled in 'F' Forms, the assessing authority can evaluate the same and after giving an opportunity of being heard to the petitioner dealer, the assessing authority can proceed to pass final orders.

19. With the above directions and modification to the effect with regard to the second portion of Para 4 of the impugned orders, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.04.2022

Index : Yes/No
Internet : Yes/No
KST

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R. SURESH KUMAR, J.

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