BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9455 of 2024
and
W.M.P.(MD) No.8577 of 2024

Robert Fibre Industries,
rep. By its Proprietor C.Paulraj,
9-76E, Neervakuzhi,
Palapallam,
Kanniyakumari 629 159. ... Petitioner

/vs./

1.The Commissioner,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepuak,
Chennai 600 005.

2.The Appellate Deputy Commissioner of State Taxes,
Madurai & Tirunelveli,
A.R.Line Road,
Tirunelveli.

3.The Deputy State Tax Officer -2,
Thuckalay 2 Assessment Circle,
Nagercoil,
Kanniyakumari ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in FORM DRC 07 in Ref. No.33ALYPP1128K1ZO/2017-18 dated 30.12.2023 on the file of the 3rd Respondent and quash the same.

For Petitioner : Mr.I.Romeo Roy Alfred

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

The Writ Petition is disposed of at the time of admission with the consent of Mr.J.K.Jayaselan, learned Government Advocate for the respondents.

2.The petitioner has challenged the impugned order dated 30.12.2023 passed by the third respondent in his proceedings bearing Ref.No.GSTIN. 33ALYPP1128K1ZO/2017-18.

3.By the impugned order, the third respondent has arrived at the tax liability of the petitioner as follows:-

"I therefore confirm the proposal and pass the following orders in accordance with Sec. 73(1) of the GST Act 2017 as detailed below:

1. Output liability arrived at as a result of short payment made, to the extent of Rs.41,65,176/- (IGST Rs.40,94,520/-, CGST Rs.35,328/- & SGST Rs.35,328/-) is hereby ordered to be confirmed.

2.The Interest liability U/s 50(1) of the GST Act 2017, for the period 20.04.2018 to 30.12.2023 (Date of passing Order) were worked out to a tune of Rs.42,72,441/- (IGST Rs.41,99,967/-, SGST Rs.36,237/- & CGST Rs.36,237/- is hereby ordered to be confirmed. However the interest for the latter period upto the date of making payment shall be calculated by the taxable person in accordance with the provisions of Sec.50(1) of the GST Act 2017.

3.Penalty to a tune of 10% on the tax liability proposed u/s 73(9) of the GST Act 2017, works out to Rs.4,16,518/- (IGST Rs.4,09,452/-, CGST Rs.3,533/- & SGST Rs.3,533/-). This amount is also ordered to be confirmed."

4.The reasons given for confirming the demand proposed in the show cause notices issued to the petitioner prior to the impugned order are as under:-

"They have also not availed the opportunity of personal hearing extended to them to express their views. In the absence of any valid reply, and non-cooperation from the taxable person, the proper officer has nothing to do rather than to finalise the case with reference to the materials available with them.

As already discussed in the Show Cause Notice, the natural Coir Fibres which is in Light Brown Colour, after subject to certain manufacturing process utilizing the chemicals purchased, and after manufacture, the outcome product is "Brush Fibre" which is a Coir Product, which is normally in Black Colour, of uniform length. It had lost its originality to be called as Coir Fibre. The manufactured product is the industrial input for the Brush Industry, and the entire supplies were effected to Manufacturing units located in other states. Hence the manufactured products is a "Coir Product (Value added product of Coconut)" is taxable at 12% (HSN 9404) Entry No.223/ Schedule II of

Notification No. 1/2017 Central Tax (Rate) Dated 28.06.2017"

5.It is noticed that though it was argued by the learned counsel for the petitioner that the petitioner is a small time operator, it is noticed that the tax liability of the petitioner has been worked out at Rs.41,65,160,176/-, which indicates that the petitioner has a huge turn over.

6.Be that as it may, the reply filed by the petitioner, which is an undated, does not deal with the allegations in the notices that were issued to the petitioner. That apart, the petitioner should have filed necessary evidence and produced samples to establish that there is no manufacturing activity carried out by the petitioner and therefore, the stand of the third respondent was incorrect.

7.Be that as it may, considering the fact that the issue has to be decided one way or the other on the correct classification adopted by the petitioner and the respondents, this Court is inclined to set aside the impugned order subject to the petitioner depositing 10% of the disputed tax with the third respondent within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall file detailed reply to the impugned order enclosing the technical literature and produce the samples before the third respondent The impugned order, which stands quashed, shall be treated as corrigendum to the notices issued to the petitioner prior to the impugned order.

8.It is made clear that the petitioner shall comply with the directions contained herein within a period of 30 days from the date of receipt of a copy of this order. The third respondent shall hear the petitioner and pass a fresh order *de nova* on merits and in accordance with law preferably within a period of 45 days thereafter.

9.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No **18.04.2024**
Internet : Yes / No
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To

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C.SARAVANAN, J.

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