IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.9.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.33889 to 33892 of 2016
& WMP.Nos.29213 to 29216 of 2016

Tvl.Qmax Spinners India Pvt.Ltd.,
rep.by its Managing Director
Mr.V.Janarthanan ... Petitioner in all WPs

Vs

The Assistant Commissioner (CT),
Central II Assessment Circle,
Commercial Taxes Buildings,
No.42, Kumaran Road,
Tirupur-641 601. ... Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN/33661883032/2011-12, TIN/33661883032/2012-13, TIN/33661883032/2013-14 and TIN/33661883032/2014-15, quash the re-assessment orders dated 17.8.2016 passed therein and further direct the respondent to pass fresh orders after examining the detailed objections and the evidence and records produced, besides granting personal hearing.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader(T)

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 carrying business in the manufacture of cotton

cone yarn and cotton hank yarn for the past nine years in the place of business of the petitioner at Arasur (PO), Coimbatore. The place of business of the petitioner was inspected by the officials of the Enforcement Wing of the Commercial Taxes Department on 5.1.2016 and certain defects were noticed.

3. Based on the report submitted by the officials of the Enforcement Wing, the respondent issued pre-revision notices dated 18.3.2016 for all the four assessment years namely 2011-12 to 2014-15. On a perusal of the said notices, it is seen that it is a mere reproduction of the defects pointed by the officials of the Enforcement Wing. Based on the said report, the respondent proposed to disallow the claim for exemption on the sale of hank yarn and apart from other issues, also proposed to levy interest/penalty under Section 27(3) of the said Act. The petitioner was granted 10 days' time to submit their objections.

4. The petitioner submitted separate objections for all the assessment years on 6.5.2016. A perusal of the objections shows that they are very elaborate running more than 10 pages wherein all the queries, which have been raised in the report, namely 13 queries have been answered. After making the factual submissions, the petitioner stated as follows :

> "(i) Reeling machine were purchased during 2009 and were continually used for producing hank yarn;
> (ii) Monthly VAT returns and VAT audit reports were submitted without any deviations and we have reported only the actual purchase and sales.
> (iii) Quarterly hank yarn packing return to the Regional Textile Commissioner, Coimbatore submitted regularly.
> (iv) In spite of our request and submission of branch certificate Unit II, the Enforcement Officials of Commercial Tax Department have not inspected our Unit II where reeling machine scrap and other were kept during the time of inspection on 5.1.2016. If they would have inspected Unit II, this suspicion about hank yarn production and existence of our reeling unit would arise.
> (v) We once again request you to reconsider your demand notice and treat the entire turnover as exempted based on our records."

5. Thus, on receipt of the objections, the respondent, being an Assessing Officer, was required to deal with the same on all issues, which have been pointed by the petitioner and he should not be solely guided by the report of the officials of the Enforcement Wing, which, at best, should be a reason for issuing a pre-revision notice.

6. However, the respondent, while completing the assessment and passing the impugned orders, merely extracted the findings of the officials of the Enforcement Wing, which were contained in the pre-revision notices and extracted the objections filed by the petitioner and in the last paragraph at page 5 of the impugned assessment orders, the respondent stated that the objections filed by the petitioner were considered carefully and cannot be accepted as proof with substantial effect and with clear documents to disprove the contentions raised in the notices. The respondent further stated that the dealers themselves admitted that no stock of hank yarn is available in the business premises and replied that their clerks have committed a mistake and raised delivery note as cone yarn instead of hank yarn and that the defects stated in the invoices are found to be correct and based on the documentary evidence verified and gathered at the time of inspection. Therefore, their objections were overruled and the proposal was confirmed.

7. A copy of the sworn statement recorded from the Managing Director of the petitioner by the officials of the Enforcement Wing on 5.1.2016 was produced before this Court, from which, it is seen that the petitioner has not accepted that they have not dealt with hank yarn. But, what they stated is that there was some clerical error committed by the staff and they are ready to produce other contemporaneous records to establish the same.

8. In the typed set of papers, the petitioner enclosed documents to show that hank yarn sales returns were submitted to the Assistant Director of Textiles, Government of India, for the relevant period. Though the officials of the Enforcement Wing recorded the fact as if there is no stock of hank yarn, when the matters came up for consideration before the Assessing Officer, namely the respondent herein, he was required to verify the documents produced by the petitioner and examine as to whether the stand taken by the petitioner that it was a clerical mistake, is genuine or not. However, the respondent misdirected himself by stating that the matter has been proved at the time of inspection.

9. If such is the finding rendered by the Assessing Officer, then the very purpose of issuing a pre-revision notice itself

stands defeated. The Assessing Officer, being a Statutory Authority, is bound to independently consider the objections given by the dealer and not mechanically be guided by the observations of the officials of the Enforcement Wing. That apart, there are no reasons assigned by the respondent for not accepting the elaborate objections given by the petitioner. In fact, identical observations have been made for all the four assessment years, though the petitioner had filed separate objections for all the assessment years. Thus, the impugned orders are held to be one without any reasons and outcome of a total non application of mind. These are good and sufficient reasons to interfere with the impugned orders.

10. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent shall consider the objections given by the petitioner on all issues, verify the records and independently complete the assessments without solely be guided by the report of the officials of the Enforcement Wing. The respondent shall afford an opportunity of personal hearing to the petitioner and in that, the petitioner is entitled to produce all the records in support of their contentions. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Central II Assessment Circle,
Commercial Taxes Buildings,
No.42, Kumaran Road,
Tirupur-641 601.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.55066
+1cc to the Special Government Pleader(T), S.R.No.55068

WP.No.33889 to 33992 of 2016 &
WMP.Nos.29213 to 29216 of 2016

RSK(CO)
CA(05/10/2016)