IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

CORAM:

THE HONOURABLE MR. **JUSTICE RAJIV SHAKDHER**

W.P.Nos.43406 to 43408 2016
and W.M.P.Nos.37264 to 37266 of 2016

Chiranjilal Spinners (P) Ltd.,
Represented by its Director,
Anurag Parasrampuria,
11-B, Kuppursamy Street,
Shevapet,
Salem – II. ... Petitioner in all W.Ps'

vs.

The Assistant Commissioner (CT) (FAC)
Shevapet (North) Circle,
Salem – 2. ... Respondent in all W.Ps'

Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records on the file of the respondent herein in TIN Nos.33462741107/2013-2014, 33462741107/2014-2015 and 33462741107/2015-2016 dated 30.11.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.S.Kanmani Annamalai,
(In all W.Ps') Additional Govt. Pleader (T).

COMMON ORDER

1. Issue notice. Mr.Kanmani Annamalai, accepts notice on behalf of the respondent. With the consent of counsels for parties, the writ petition is taken up for final disposal.

2. The captioned writ petitions lay challenge to the three separate orders of even date i.e., 30.11.2016.

3. By virtue of the impugned orders, the respondent has imposed tax and penalty on the petitioner with respect to three assessment years i.e., assessment years 2013-14, 2014-15 and 2015-16. The tax imposed vis-a-vis, each of the assessment years is as follows:

Assessment Years	***Trunover assessed U/S. 22 at 5%***	***Tax Due at 5% Rs.***	***Tax Paid Rs.***	***Balance Rs.***
2013-14	7,68,59,565	38,42,978	NIL	38,42,978
2014-15	11,09,22,758	55,46,138	NIL	55,46,138
2015-16	13,31,76,797	66,58,840	25,426	66,33,414

4. The impugned orders proceeds on the basis that Viscose Hank yarn sold by the petitioner is chargeable to tax at the rate of 5% under Entry 3 (a) of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 (in short “the 2006 Act”)

4.1. On the other hand, the petitioner's claim is that "all kinds" of Hank yarn including Viscose Hank yarn is exempted from tax, in view of the fact that it appears as Item 44 in Part B of Fourth Schedule of the 2006 Act.

5. It appears, albeit, upon perusal of the impugned order, that the respondent has based his view on the opinion of the Advance Ruling Authority (in short 'ARA'). It is the petitioner's case that the respondent by restricting the exemption to cotton Hank yarn, has supplanted the provisions of item 44 appearing in Part B of the Fourth Schedule of the 2006 Act.

6. This apart, the petitioner says that upon being issued notices, objections were filed, and that while opportunity was given to file objections, no opportunity of personal hearing was granted.

6.1. According to the petitioner, there has been a complete breach of principles of natural justice. For this purpose, the counsel for the petitioner, relies upon the proviso to Sub Section 4 of Section 22 of the 2006 Act.

7. Furthermore, the learned counsel for the petitioner says that the same direction can be issued as was issued by this Court vide order dated 28.02.2014, passed in a batch of writ petitions, in which the lead Writ Petition was: W.P.No.6149 of 2014.

7.1. To be noted, in those matters, this Court had directed the Assessing Officer to form a view, without being burdened by the opinion rendered by the ARA.

8. Having heard the learned counsel for the parties, I am inclined to allow these writ petitions for the following reasons:

8.1. Firstly, there has been a breach of principle of natural justice. In as much as, despite a specific statutory provision contained in the proviso to Sub Section 4 of Section 22 of the 2006 Act, no opportunity was afforded by the respondent before passing the impugned order.

8.2. Secondly, what is clear, is that, the respondent has been gone by the opinion expressed by the ARA. Therefore , consistent with a view taken by a learned Single Judge of this Court vide order dated 28.02.2014, passed in W.P.No.6149 of 2014, I am inclined to direct the Assessing Officer to independently arrive at a conclusion, as to whether, the petitioner is entitled to exemption in the relevant assessment years, as claimed.

8.3. Consequently, the impugned order is set aside.

8.4. Accordingly, the petitioner will appear via its authorised representative before the respondent on 04.01.2017 at 11.00 am. The petitioner will also be entitled to file additional documents, if necessary, in support of its submission. The respondent will accord personal hearing to the petitioner's authorised representative and thereafter, proceed to pass fresh assessment order(s). In case, for any reason, the aforesaid date is not convenient to the respondent, he shall be at liberty to fix another date, which is proximate to the date given by the Court. Needless to say, the said exercise will be concluded at the earliest, though, not later than eight (8) weeks from the date of receipt of a copy of the order.

9. The Writ Petitions are, thus, closed based on the aforesaid directions. Resultantly, the connected pending applications shall also stand closed. There shall, however, be no order as to costs.

vsm 16.12.2016

Note: Issue order copy on or before 30.12.2016.

To

The Assistant Commissioner (CT) (FAC)
Shevapet (North) Circle,
Salem – 2.

RAJIV SHAKDHER,J.

vsm

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and
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