IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 40054 of 2006
and
M.P.No. 1 of 2006

M/s Nandhi Spinning Mills (P) Ltd.,
rep. by its Director N.Santhakumar, ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Dharapuram Assessment Circle,
Dharapuram, Erode District. ..Respondent

Prayer: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings in TNGST 3020826/2000-2001, dated 12.05.2006 and to quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate (Taxes)

O R D E R

Heard Mr.S.Ramanathan, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate (Taxes) for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) as well as Central Sales Tax Act, 1956, is aggrieved by the order of assessment passed by the respondent, dated 12.05.2006, for the assessment year 2000-01, under the TNGST Act,1959.

3. The learned counsels on either side submitted that, in respect of the very same assessee/petitioner with regard to the assessment year 2001-02, an identical issue was considered by this Court, in W.P.No.14086 of 2007, and the Writ Petition was allowed, by order, dated 19.09.2017. At this stage, it

would be apposite to quote the said order, which is as follows:-

> " Heard Mr.S.Ramanathan, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate (Taxes) for the respondent.
>
> 2. The petitioner is aggrieved by the order of assessment passed by the respondent, dated 12.05.2006, for the assessment year 2001-02, under the provisions of TNGST Act,1959. It appears that the respondent obtained some information from the Director General of Central Excise Intelligence, Chennai, and the Commissioner of Central Excise, Salem, that the petitioner has suppressed taxable turnover, as there was unaccounted sales of Cone yarn. Notice was issued to the petitioner, proposing to assess the turnover at 4% under Section 16 (1)(A) of TNGST Act, 1959 and also proposed to levy penalty under Section 16 (2) of the said Act. The petitioner submitted a reply, which was received by the respondent on 15.03.2006 and requested for copy of the information, which is said to have been received by the respondent from the Central Excise Department. The respondent, therefore, should have provided necessary information, afforded further opportunity tothe petitioner to give their objections and then, proceeded to complete the assessment. Unfortunately, in a single line, the respondent has stated that the objections are overruled and confirmed the proposal in the notice, dated 20.02.2006.
>
> 3. The case on hand is a classic example, as to how, the assessment should not be completed. The respondent has clearly abdicated his statutory responsibility as an Assessing Officer. Accordingly, the Writ Petition is allowed and the impunged order is quashed. No costs. "

4. Following the above referred decision, this Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

-sd/-
Assistant Registrar

/ TRUE COPY /
Sub-Assistant Registrar

msm/sd

To

The Deputy Commercial Tax Officer,
Dharapuram Assessment Circle,
Dharapuram, Erode District.

+1 copy to cc Special Government pleader SR.NO. 83101

+1 cc to M/S.S.RAMANATHAN ADVocate SR.NO. 83124

W.P.No. 40054 of 2006

RD 12/03/2018