IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 14087 of 2007

M/s. Nandhi Spinnins Mills (P) Ltd.,
rep. by its Director N. Santhakumar,
17, Rajendra Nagar,
Udumalai Road,
Dharapuram, Erode District. ..Petitioner

Vs.

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

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the respondent in his proceedings in TNGST No. 3020826/2004-2005 dated 20.11.2006 and quash the same as illegal.

For Petitioner :: Mr.S. Ramanathan
For Respondent : Mr.K. Venkatesh
Govt. Advocate

O R D E R

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

2. The petitioner is aggrieved by the order of assessment passed by the respondent dated 20.11.2006 for the assessment year 2004-2005 under the provisions of TNGST Act, 1959. The respondent had initially completed the assessment for the relevant year and passed an order dted 24.06.2006 accepting the petitioner's stand and calculated the tax payable at Rs.19,008/-. Subsequently, after about three months, the respondent issued a notice dated 05.09.2006, which was based upon D3 proposal proposing to revise the original assessment and had included the turnover liability under Secion 3A of the said Act. There was also a proposal to levy penalty under Section 12

(3)(b) of the Act. The petitioner submitted a detailed objection dated 11.09.2006, in which apart from the factual issues, the petitioner placed reliance on the decisions of this Court and the Honourable Supreme Court for the proposition that lease of immovable property could not be brought to deemed sale and meaning for goods, deemed sale, immovable property. Therefore, it was pointed out that they are totally out of mischief of Section 3A of the Act. After rejecting the objection, the respondent has passed the impugned order.

3. I have carefully perused the materials on record including the parawise instructions given by the respondent to the learned Special Government Pleader - Taxes vide letter dated 31.01.2008. At first blush, it appears that the impugned order is a detailed speaking order, but on close scrutiny, it is seen that it is a single line order merely overruling the objections of the petitioner stating that the objections are rejected. The other contents in the impugned order are an extract of the revision notice dated 05.09.2006. The manner in which the impugned assessment has been completed is clearly unsustainable and the procedure adopted by the Assessing Officer is thoroughly flawed. This is sufficient to set aside the impugned order. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remitted to the respondent for fresh consideration, in accordance with law and after affording an opportunity of hearing to the petitioner.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

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

+1 CC to Mr.S. Ramanathan, Advocate sr 68813.

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RSI(CO)
sp(24/10/2017)