IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22141 of 2004

M/s.Navdurga Spinners Ltd.,
150, Montieth Road,
Egmore, Chennai - 600 008. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Egmore-I Assessment Circle,
Chennai.

2.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 009. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent above named in TNGST 0441193/2001-02, quash the order passed therein dated 28.05.2004 and further direct the first respondent herein to apply the proceedings issued by the second respondent herein in his D.Dis.Acts Cell-II/60711/2001 dated 06.11.2001 in the matter of assessment of the petitioner herein for the assessment year 2001-02.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader.

O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents. With the consent on either side the writ petition itself is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the **first respondent** under the provisions of the Tamil Nadu General Sales Act, 1959 (TNVAT Act), has filed this Writ Petition challenging an order, dated 28.05.2004, rejecting the petitioner's application filed under Section 55 of the Act for rectification of an error.

3.The petitioner's case rests upon an exemption notification issued by the Government reducing the rate of tax to 2% in respect of tax payable on the sale of man-made stable fibers, fiber yarn and waste of any of them by any dealer, who does not have any branch transfer or consignment transfer to outside the State during the year. The said exemption notification was notified in G.O.Ms.No.103, dated 07.04.1998 and came into force with effect from 27.03.1998. The notification reducing the rate of tax was valid till it was cancelled vide notification, dated 18.08.2001 in G.O.Ms.No.68, with effect from the said date namely, 18.08.2001. Therefore, any dealer who dealt with these products and subject to the conditions contained in G.O.Ms.No.103, is entitled to be taxed at the reduced rate of 2%.

4.The respondent issued notice dated 22.12.2003, pointing out that certain discrepancies that have to be reconciled and called upon the petitioner to produce the records and sales bills in support of every description of goods sold namely manmade staple fibre yarn to qualify for assessment at 2% and 4% respectively.

5.The petitioner filed a reply dated 30.04.2012 and enclosed the reconciliation for the sales turn over among the returns and profit and loss account. It appears that thereafter, the petitioner has also produced certain documents. The Assessing Officer, while completing the assessment and passing the order, dated 31.12.2003, pointed out that the dealers have reconciled the differences by furnishing the required details and accordingly, split up the said turn over for two periods namely, between 01.04.2001 and 17.08.2001, Rs.93,09,419/- at 2% and between 18.08.2001 and 31.03.2002, Rs.1,09,23,400/- at 4%. However, while computing the rate of tax payable in the last paragraph of the assessment order, the respondent clubbed both the turn overs namely Rs.93,09,419/- and Rs.1,09,23,400/- and levied tax at 4%.

6.Therefore, the petitioner submitted an application under Section 55 of the Act to rectify the error. This has been rejected by the impugned order on totally an untenable ground by which the respondent is attempting to re-do the assessment proceedings itself and it has been observed, as if, the dealer did not file any objection or produce any records, whereas in the order of assessment, the very same officer has recorded that the dealer has reconciled the differences by furnishing the required details.

7.Thus, this Court is of the view that the stand taken by the respondent in the original assessment order, dated 31.12.2003, by splitting the turn over into two parts shall prevail and consequently a levy of tax uniformly at 4% for the entire turn over requires to be set aside. Accordingly, this writ petition is allowed and the impugned order is set aside and in particular with regard to levy of tax at 4% on total turnover Rs.2,02,32,819/- is set aside and the respondent is directed to levy tax on the turn over of Rs.93,09,419/- for the period from 01.04.2002 to 17.08.2001 at 2% and on the remaining turn over at 4% and pass revised orders on merits and in accordance with law, within 12 weeks from the date of receipt of a copy of this order. No costs.

14.07.2017

Index:Yes/No
abr/pbn

To

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   Egmore-I Assessment Circle,
   Chennai.

2. The Special Commissioner &
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   Ezhilagam, Chepauk, Chennai – 600 009.

T.S.SIVAGNANAM, J.

abr/pbn

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