IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.32947 to 32949 of 2003
and W.M.P.Nos.39882 to 39887 of 2003

M/s.Shenbagam Thread Mills,
32, Ranganathapuram I Street,
Kongu Main Road,
Tirupur-611 607. .. Petitioner in all W.Ps'

Vs.

The Commercial Tax Officer,
Kongunagar Assessment Circle,
Tirupur. .. Respondent in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, prayed to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in C.S.T.No.608531/1998-99, 1999-2000 and 2000-2001, quash the order dated 19.09.2003, 19.09.2003 and 30.09.2003 therein and further direct the respondent to follow the clarification No.301/2001 dated 29.10.2001 issued by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, and levy tax at 2% on the interstate sale of Dyed Polyester Yarn effected by the petitioner.

For Petitioner : Mr.B.Raveendran
(in all W.Ps')

For Respondent : Mr.K.Venkatesh
(in all W.Ps') Government Advocate.

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COMMON ORDER

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provision of the Central Sales Tax Act, 1956 and the then Tamil Nadu General Sales Tax Act 1959, is a Textile Mill and purchasing polyester yarn in bulk from local registered dealers and this is sold as such and sometimes, the petitioner also dyes the polyester yarn, and sells the dyed polyester yarn.

3. The respondent Assessing Officer issued notice dated 13.06.2001 proposing to revise the assessment under the Tamil Nadu General Sales Tax Act for the years 1998-1999, 1999-2000 and 2000-2001. The main reason for proposing to revise the assessment is by placing reliance on the decision of the Tamil Nadu Taxation Special Tribunal, Chennai, in the case of ***Tvl.Popular Thread Factory Vs. Commercial Tax Officer, Chennai*** reported in ***118 STC 59***.

4. The petitioner submitted their objections dated 23.07.2001 pointing out various factual issues and submitted that the correctness of the said decision has been put to challenge before this Court and the writ petitions are pending and requested for deferring the proceedings. However, the respondents without defer the proceedings, passed the impugned assessment orders conforming the proposal in the notice dated 13.06.2001. These assessment orders are impugned in this writ petition.

5. The matter pertaining to Popular Thread Factory has attained finality and the Hon'ble Division Bench of this Court, in the case ***Popular Thread Factory Vs. Commercial Tax Officer, Chennai, [Volume 124 STC 569]*** has allowed the case in favour of the dealer, holding as hereunder:

> "..3. The activity of the assessee, as accepted by the Revenue is only to purchase the cotton yarn. It does not do anything more in relation thereto thereafter, except to dye it, put it into spoons and sell it under its own name as sewing thread.
>
> 4. As held by this Court in State of Tamil

Nadu Vs. R.V.Krishniah Chetty and Sons [1990] 92 STC 262, sewing thread does not lose its character as cotton yarn because it is used as sewing thread.

5. The Court held in the decision reported in State of Tamil Nadu V. R.V.Krishniah Chetty and Sons [1990] 78 STC 422 (Mad) that sewing thread does not lose its character as cotton yarn and continues to retain its identity and character as cotton yarn notwithstanding the fact that they are sold for being used as sewing thread. The Court observed thus:-

"In our view, sewing thread is no different from cotton yarn and they are one and the same commodity..."

6.The fact that the assessee adds colour to the yarn by itself does not make it any less cotton yarn. The Tribunal was wholly in error in holding that sewing thread is not cotton yarn and that the assessee can be subjected to tax by treating such sewing thread as not being declared goods. The impugned order of the Tribunal is, therefore, set aside and the writ petition is allowed."

6. In the light of the decision, the basis for proposing to revise the petitioner's assessment pursuant to notice dated 13.06.2001 is no longer sustainable.

7. For the above reasons, the Writ Petitions are allowed and the impugned assessment orders are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Commercial Tax Officer,
Kongunagar Assessment Circle,
Tirupur.

+1 cc to M/s.Chandran Karuppiah Advocate sr 47575

W.P.Nos.32947 to 32949 of 2003

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