IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM :

The Hon'ble Mr.Justice T.S.Sivagnanam
W.P.Nos. 19228 to 19232 of 2006
and
M.P.Nos.1 of 2006 (5 in nos.)

Kamatchi Textiles,
represented by its Partner R.Sundaram,
No.108-3-A By Pass Road,
Komarapalayam. ..Petitioner in all Wps

Vs.

1. The Deputy Commercial Tax Officer,
   Sankari.

2. Kandasamy Spinning Mills (P) Ltd.,
   No.331, Salem Main Road,
   Komarapalayam. ..Respondents in all Wps

Prayer in W.P.No.19228 of 2006:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the files of the first respondent herein in his CST No.676680/2001-2002 dated 22.05.2006 and to quash the same with the direction to issue summons to M/s.S.Kandasamy Spinning Mills Private Ltd., Suriyampalayam, Vasavi College Post, Erode, the second Respondent herein for the production of accounts of the petitioner herein.

Prayer in W.P.No.19229 of 2006:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the files of the first respondent herein in his CST No.676680/2002-2003 dated 22.05.2006 and quash the same with the direction to issue summons to M/s.S.Kandasamy Spinning Mills Private Ltd., Suriyampalayam, Vasavi College Post, Erode, the second Respondent herein for the production of accounts of the petitioner herein.

Prayer in W.P.No.19230 of 2006:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in his TNGST No.3223786/2001-2002 dated 22.05.2006 and quash the same with the direction to issue summons to M/s.S.Kandasamy Spinning Mills Private Ltd., Suriyampalayam, Vasavi College Post, Erode, the second Respondent herein for the production of accounts of the petitioner herein.

Prayer in W.P.No.19231 of 2006:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in his TNGST No.3223786/2002-2003 dated 22.05.2006 and quash the same with the direction to issue summons to M/s.S.Kandasamy Spinning Mills Private Ltd., Suriyampalayam, Vasavi College Post, Erode, the second Respondent herein for the production of accounts of the petitioner herein.

Prayer in W.P.No.19232 of 2006:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in his TNGST No.3223786/2003-2004 dated 22.05.2006 and quash the same with the direction to issue summons to M/s.S.Kandasamy Spinning Mills Private Ltd., Suriyampalayam, Vasavi College Post, Erode, the second Respondent herein for the production of accounts of the petitioner herein.

For Petitioner in all WPs	:	Mr.N.Inbarajan
For Respondent-1 in all WPs	:	Mr.S.Kanmani Annamalai Additional Government Pleader
For Respondent-2 in all WPs	:	Mr.V.Sundareswaran Senior Panel Counsel

C O M M O N ORD E R

Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner, Mr.S.Kanmani Annamalai, the Additional Government Pleader for the first respondent and

Mr.V.Sundareswaran, the learned Senior Panel Counsel for the second respondent.

2. The petitioner is before this Court, challenging the assessment orders passed by the first respondent, dated 22.05.2006, for the assessment years 2001-02 to 2003-04, stating that, they are exparte assessment orders.

3. The matter pertains to assessment, under the Central Sales Tax Act, 1956 and Tamil Nadu General Sales Tax Act, 1959, for the assessment years 2001-02 to 2003-04. The petitioner filed returns for the relevant years, after which, they were summoned for production of accounts for final check. However, the petitioner did not appear before the first respondent for production of the accounts. Several opportunities were granted to the petitioner. The petitioner avoided the same, which clearly shows that they did not co-operate in the assessment proceedings. Therefore, the first respondent proposed to revise the turnover, and also to levy penalty. Accordingly, a best of judgment notice was issued to the dealer/petitioner on 16.01.2006, which was duly served on them on 17.01.2006, by registered post with acknowledgment due. The petitioner, by reply, dated 30.01.2006, stated that their account books were locked in the Mill premises, viz., Kandasamy Spinning Mills (P) Ltd., the second respondent herein, and due to dispute, they are unable to produce the accounts. Another notice was sent by the first respondent, on 10.02.2006, stating that the dispute was purely civil dispute and the petitioner was under a legal obligation to produce the correct and complete accounts for scrutiny and one more opportunity was granted to them to produce the accounts on or before 28.02.2006 without fail. However, the petitioner failed to utilize the opportunities, and therefore, the first respondent, left with no other option, confirmed the proposals made in his best of judgment notice, dated 16.01.2006, and passed the assessment orders.

4. The petitioner has come forward with these Writ Petitions stating that, adequate opportunity was not granted to them, and the third parties, whose transactions were relied on were not made available for cross-examination. The said third party has been impleaded as the second respondent, in this Writ Petition, viz., Kandasamy Spinning Mills (P) Ltd. They have filed a counter affidavit clearly stating that, there are no records available with them, as alleged by the petitioner. There is no reply affidavit to the counter affidavit filed by the second respondent. Therefore, the theory, that the Managing Director of the second respondent/Mill should be summoned for cross-examination, and they should be summoned for production of documents is a theory, which has to be rejected. The petitioner

has failed to co-operate in the assessment proceedings. Therefore, I find that there is no violation of principles of natural justice.

5. It is submitted by the learned counsel for the second respondent, that the whereabouts of the petitioner are not known. That apart, at the time, when the Writ Petitions were admitted, no interim order was granted. It is not known as to what has happened to the matters pending before the Assessing Officer. Hence, absolutely, there are no grounds to entertain the Writ Petition, in such a case, where, the petitioner had stayed away from the proceedings and failed to extend co-operation in the assessment proceedings.

6. Thus, for all the above reasons, this Court is not inclined to grant any relief in these Writ Petitions. Accordingly, all these Writ Petitions are dismissed. However, the petitioner/Mill are at liberty to file an appeal against the impugned assessment orders, if they are so advised. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

msm/sd

To

1. The Deputy Commercial Tax Officer,
   Sankari.

+1cc to Mr.N.Inbarajan, Advocate SR.No.77133
+1cc to Special Government Pleader SR.No.77256

W.P.Nos.19228 to 19232 of 2006

GN(27/12/2017)