IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2017

Coram

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

Writ Petition No.15810 of 2004
and
W.P.M.P.Nos.18772 of 2004

M/s. Nisha Kishan Spinning Mills (P) Ltd.,
rep. by its Managing Director,
S.K.A.P. Balakrishnan
...Petitioner

Vs

The Commercial Tax Officer - I,
Theni - 625 531.
...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records, relating to the assessment order passed by the respondent, in his TNGST No.5120746/2001-02, dated 30.03.2004, for the assessment year 2001-02 and to quash the same.

For Petitioner : Mr. N.Md. Ibrahim Ali
for M/s.L.Maithili Associates
For Respondents : Mr. K. Venkatesh
Government Advocate

O R D E R

Heard Mr. M. MD. Ibrahim, the learned counsel appearing for the petitioner, and Mr. K.Venkatesh, the learned Government Advocate for the respondents.

2. The petitioner is an assessee on the file of the respondent, under the provisions of the Tamil Nadu General Sales Tax Act (hereinafter, referred to as 'the TNGST Act') and they approached this Court, by filing this Writ Petition, seeking to quash the assessment order passed by the respondent for the year 2001-02, dated 30.03.2004.

3. The learned counsels appearing on either side do not dispute the fact that the issue involved in this Writ Petition is no longer res integra, as it has been dealt with by this Court, in the decision rendered in the case of (M/s. S. K. F.

Bearing (I)Ltd., Vs. The Commercial Tax Officer, Manali Assessment Circle, Chennai) in W.P.No.27356 of 2004, dated 22.06.2016, wherein, two issues came up for consideration, viz., i) whether the Circular issued under Section 28-A of the TNGST Act was binding the Assessing Officer and ii) whether the year could be split up for the purpose of levy of additional sales tax. Both the issues were answered in favour of the assessee, and the Writ Petition was allowed, and it would be apposite to quote the relevant paras from the said order, which reads as follows:-

> " 4. In the counter affidavit filed by the respondents it is stated that Circular will not bind the assessing Officer. However, this stand is incorrect because the Circular has been issued in exercise of the powers under Section 28-A of the Act and it would bind the assessee. Further in the counter affidavit reference has been made to a judgment of the Honourable Division Bench of this Court in the case of Philips India Limited Vs. Assistant Commissioner (CT), Fast Track Assessment Circle II and others (137 STC 134). However, there is a subsequent decision of another Honourable Division Bench in the case of the State of Tamil Nadu, represented by the Deputy Commissioner of Commercial Taxes, Tiruchirappalli Division vs. Tvl. National Time Company in TC(R) No.2316 of 2008, dated 08.07.2010. In the said decision, the issue as to whether the year could be split up was considered and it was held as follows:
>
> "13. The definition of the expression "Year"which means the financial year, is only for the purpose of ascertaining what is the financial year with reference to which the tax liability under the main Act as well as the Additional Sales Tax under the said Tamil Nadu Sales Tax Act is to be worked out.
>
> The mere fact that under Section 291)(a), a reference is made to a "Year", the same will not in any way create any different impact, while applying the liability or the rate of tax to be worked out during the financial year, different rates are to be worked out by virtue of prescription of such different rates, due to statutory amendments, the only exercise to be carried out would be

to ascertain the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating the financial year in the case of any assessee, while applying the un-amended section 2(1)(a) upto 31.07.1996 and the liability after its amendment on and after 1.8.1996, for the purpose of calculating the additional sales tax liability."

5. In the light of the above decision as well as the statutory Circular dated 14.12.2002, the respondent has to re-do the entire assessment afresh. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the respondent for fresh consideration to take note of the decision referred supra and also the Circular dated 14.12.2006 and proceed in accordance with law. No Costs. "

4. Thus, following the afore said decision, the present Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer - I,
Theni - 625 531.

+1 Cc to Mr. N.Md. Ibrahim Ali, Advocate sr 49176.
+1 Cc to Govt. Pleader sr 49434.

Writ Petition No.15810 of 2004

SP(05/10/2017)