IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19493 of 2004 &
W.P.M.P.No.23449 of 2004

M/s.Prachidhi Spinners (P) Ltd.,
Pethapampatti, Udamalpet Taluk,
Tamil Nadu. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Udamalpet (North) Assessment Circle,
Tamil Nadu. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TNGST 2480985/2002-03 and quash the order dated 31.05.2004 passed therein.

For Petitioner : Mr.B.Raveendran
for M/s. Chandran
Karuppiah Ramani

For Respondent : Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting on behalf of the respondent.

2.The petitioner is an assessee on the books of the Deputy Commissioner, Udamalpet holding a registration certificate under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act), and Central Sales Tax Act (CST Act) and the accounts of the petitioner for the year 2002-03 were called for and checked by the Deputy Commissioner, Commercial Tax Office, and the total taxable turnover was determined at Rs.6,75,05,985/- and Rs.86,48,051/- respectively by order dated 22.03.2005 and the transaction under the CST Act was assessed separately on 25.10.2002. The place of the business of the petitioner was inspected by the Enforcement Wing Officers, during which, it appears that there were certain alleged irregularities which has paved way for issuance of notice dated 29.04.2004, stating that on verification of records, it was found that even though records filed for the proof of evidence that the consignment of rejected cotton were returned to the sellers, but the petitioner had not filed the proof of records that the cotton have actually crossed the checkpost border and also the letter of acknowledgment of the consignor in the other State. Therefore, the respondent proposed to disallow the claim of exemption for the rejected cotton and proposed to assess the same on the estimated production of yarn and waste on the total quantity of rejected cotton of 729495 Kgs.

3.The petitioner submitted their objections dated 18.05.2004, stating that the details of rejected cotton were filed along with the monthly returns and the detailed statement contains seven pages with the following particulars.

1. Sl.No.
2. Name and address of the party with RC.No.
3. Party's Lot No.
4. Mill's Lot No.
5. Quantity in bales
6. Form IV (Central Excise Record) Page No.
7. Quantity in Kgs.
8. Date of arrival
9. Invoice No. and date
10. Amount
11. Date of rejection
12. Form XX No.
13. Lorry No.
14. Freight
15. Amount recovered

4.It was submitted that the Assessing Officer who completed the assessment by order dated 22.03.2004 has examined all the documents in detail and allowed the claim for exemption with regard to allocation and the petitioner has not produced records for that the cotton have actually crossed the Chekpost border. The petitioner submitted as follows:

> "5.We submit that the cotton were taken back by the supplier and he has arranged vehicle to take back the rejected cotton. Hence, we are not having any proof that cotton have actually crossed the checkpost border. Without prejudice to the above we submit that the checkpost authorities will not give any acknowledgment for crossing the checkpost. In the absence of which, assessee cannot file a proof of record for goods crossing the checkpost border.

6.We submit that we have already filed a letter received from the supplier to the effect that the bales may kindly be returned to the party. We are enclosing herewith a sample of the following documents to prove that the cotton has been rejected and taken back by the supplier.

1.Letter from Sri Kameswari Cotton Traders

2.Permission letter from Market Committee's dated 19.04.2004 for returning the material through Sri Kameswari Cotton Traders

3.Form XX No.02891213 dated 19.04.2002

Likewise we have proof for all the transactions. All the above documents will prove the fact that the cotton has been rejected and taken back by the supplier".

5.The petitioner also submitted that the Southern India Mills Association, Coimbatore have received the statistics of the production from various mills and the date was also shared with the respondent to show that they could not have utilized the alleged quantity of cotton viz., 729495 Kgs. as they do not have production capacity to consume the rejected cotton. Further, the petitioner also questioned the jurisdiction of the officer to invoke Section 16 of the Act, apart from placing their objections on the proposal to levy penalty. The petitioner also produced letters from the cotton suppliers to establish that they have taken delivery of the rejected and apart from that they have produced records issued by the Coimbatore Marketing Limited of the Southern India Mills Association etc. That apart, the petitioner also furnished individual affidavits from all the cotton suppliers who vouched that they have taken back the rejected quantity of cotton.

6.These affidavits were tested before the authority and in spite of these records placed before the authority, the respondent has passed the impugned order, while accepting that the records were produced by the petitioner, held that the records produced do not establish that the consignment of rejected cotton actually crossed the chekpost border as pointed out earlier. The assessment was initially completed on 22.03.2004, wherein, the Assessing Officer has observed that the dealers effected purchases of cotton from local registered dealers and from other States. All the purchases were duly accounted for and out of the cotton purchases, the dealers have rejected the cotton on a turnover of Rs.4,23,99,144./- for which they have filed detailed statement issued from the Office and no freight charges have been paid by the dealer. Further, the Assessing Officer observed that accounts were verified and assessed for the year 2002-03. Further, it was stated that sales are locally effected and they also effected sales to other States and on consignment sales. Further, taking note of the inspection done by the Enforcement Wing Officers on 25.10.2002, the objections given by the petitioner were considered and thereafter, the assessment has been completed. In the para wise remarks given by the respondent, the respondent has reiterated the stand taken in the impugned order that there is no proof to show that the rejected consignment of cotton has crossed the Tamil Nadu checkpost border. Further, the observations in para No.9 of the draft counter affidavit are general in nature and not specific to the petitioner.

7.In my considered view, the notice proposing to revise the assessment dated 29.04.2004 is selfish on account of change of opinion as there was a change of the Assessing Officer. Nevertheless, the petitioner has produced records to substantiate the contentions that the sellers have taken back the return. There is no whisper in the impugned order that those records are false or frivolous, but the respondent would state that they are not sufficient to prove that the rejected cotton consignment has crossed the Tamil Nadu check post. On pre-revision notice being issued, a dealer submitted his objections and I find that the objections given in the instant case is sufficient to discharge the initial burden of proof and if the respondent displaces the documents, then the burden is on the respondent to prove the same. The petitioner cannot be called upon to prove the negative. Thus, this Court is of the view that the impugned proceedings are clear after thought on account of change of opinion by the new Assessing Officer. Thus, for the above reason the impugned order calls for interference.

8.Accordingly, this writ petition is allowed and the impugned order is quashed. No costs. Consequent, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer,
Udamalpet (North) Assessment Circle,
Tamil Nadu.

+1 CC to Ms. Chandran, Karuppiah Ramani Advocate sr 50740
+1 CC to Spl. Govt. Pleader sr 51218.

W.P.No.19493 of 2004

RSI(CO)
sp(11/08/2017)