IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22810 of 2014 and M.P.No.2 of 2014

M/s.Shakthi Knitting Ltd.,
Rep. by its General Manager-Finance,
No.18, Universal Road, Tirupur-1. ... Petitioner

-vs-

The Assistant Commissioner (CT),
Central I Circle,
Tirupur. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TNGST No.2401144/2004-05, quash the pre-assessment notice dated 05.06.2014 issued therein and further direct the respondent to pass deemed assessment order for the assessment year TNGST 2004-05 as contemplated under Sec.12-C of the TNGST Act read with Sec.9(2) of the CST Act.

For Petitioner: Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondent: Mr.V.Haribabu,
Additional Government Pleader

O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Erstwhile Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") and the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") is aggrieved by a pre-assessment notice dated 05.06.2014 proposing to re-assess the petitioner for the assessment year 2004-05.

3.The petitioner's case is that in terms of Section 12-C of the TNGST Act, the assessment has to be done on the basis of the return relating to the petitioner's turnover and on the basis of the declaration or certificate as may be prescribed, furnished on or before 31.03.2007 and such return shall be accepted without requiring the presence of the dealer or production of books of accounts by the dealer and without following the said procedure, the respondent has issued the impugned notice.

4.The learned Additional Government Pleader pointed out that assessment under Section 12-C of the TNGST Act is required to be done subject to the conditions that may be prescribed, which have been prescribed under Rule 5-E of the amended Tamil Nadu General Sales Tax Rules, 1959 as amended vide Notification dated 23.12.2006 and three of the conditions, which may apply to the petitioner's case, are contained in Clauses 3, 4 and 7 of Rule 5-E of the Tamil Nadu General Sales Tax Rules, 1959, which read as follows:-

> "(3) During the relevant assessment year, the dealer should not have attempted to conceal or suppress tax liability of more than twenty-five thousand rupees.
>
> (4) The dealer should not be in arrear of tax as per the monthly and annual returns filed for the assessment years concerned.
>
> (7) In case where the total turnover under the Act exceeds fifty lakhs of rupees, the dealer shall file his annual return only after it is duly audited and certified by a Chartered Accountant or a Cost Accountant."

5.Therefore, it is submitted that subject to the conditions prescribed under the said Rule, the procedure under Section 12-C of the TNGST Act is exercisable.

6.If the contention of the respondent has to be accepted, then there should be specific allegation against the petitioner that during the relevant assessment year, the petitioner has attempted to conceal or suppress tax liability of more than Rs.25,000/-. There should have been an allegation that the petitioner should not be in arrears of tax as per the monthly and annual returns and in case where the total turnover exceeds Rs.50,00,000/-, the dealer ought to have filed his annual return only after it was audited and certified by a Chartered Accountant or a Cost Accountant.

7.On a reading of the impugned notice, it is seen that there were four proposals. One pertaining to purchases and sales, which are supported by bills. However, details of those transactions have not been given and there is no specific averment or suppression or willful statement or concealment.

8.The other issue is pertaining to the purchases effected by the petitioner with regard to dyes and chemicals. On this issue, the respondent has referred to a decision of the High Court of Bombay and proposed to assess the deemed sale value of the material so used in the process of dyeing.

9.The next issue is whether the petitioner is entitled to avail concessional rate of duty against Form XVII for purchase of dyeing machinery spares, chemicals and packing material.

10.The last issue, pertaining to furnace oil, is whether the petitioner is entitled to concessional rate of tax under Section 3(3) of the TNGST Act against Form XVII.

11.Thus, I find that there is no specific averment or allegation or concealment or suppression of tax liability. However, the amount mentioned in the impugned notice do exceed Rs.25,000/-.

12.Be that as it may, if there is any allegation or suppression or concealment or willful statement, then the respondent shall make such averment in the show cause notice, as the petitioner is entitled to object to such proposal. Therefore, the impugned notice has not been happily drafted and does not convey the intention, which passes in the minds of the Assessing Officer.

13.Thus, for the above reasons, this Court is inclined to interfere with the impugned show cause notice simultaneously, giving liberty to the respondent to proceed in accordance with law afresh.

14.In the result, the writ petition is allowed, the impugned order is quashed and the respondent is directed to issue fresh show cause notice clearly setting out as to what is the proposal and if there is any allegation or concealment or suppression or willful statement, the same should be explicitly stated to enable the petitioner to give an effective objection. No costs. Consequently, M.P.No.2 of 2014 is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

abr
To

The Assistant Commissioner (CT),
Central I Circle,
Tirupur.

+ 1 cc to Mr. B. Raveendran, Advocate Sr.45884
+ 1 cc to the Government Pleader Sr.46237

W.P.No.22810 of 2014

(CS-VII)
EU(02/08/2018)