IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM
THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.50320 of 2006
and M.P.No.1 of 2006

M/s.Prachidhi Spinners (P) Ltd.,
Pethampatti, Udumalpet Taluk,
Coimbatore District. .. Petitioner

Vs.

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

Petition filed under Article 226 of the Constitution of India to issue Writs of Certiorari calling for the records of the respondent in TNGST 2480985/2003-04 and quash the impugned proceedings dated 08.12.2006

For Petitioner : Mr.Raveendran
for Mr.K.J.Chandran
For Respondent : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petitions to issue writs of Certiorari calling for the records of the respondent dated 08.12.2006 for the assessment year 2003-04 and to quash the same.

2.It is the case of the petitioner that the respondent had passed the impugned order dated 08.12.2006 only based on the Inspection Report.

3.Mr.Raveendran, learned counsel appearing for the petitioner submitted that in similar circumstances for the assessment year 2002-03, the petitioner has challenged the impugned order in W.P.No.19493 of 2004 and this Court, by order dated 19.07.2017 set aside the same and allowed the Writ Petition. In paragraph - 7 of the order dated 19.07.2017 in W.P.No.19493 of 2004, this Court has held as follows:

> "...
> 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 cross 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."

4.Mr.M.Hariharan, learned Additional Government Pleader (Tax) appearing for the respondent submitted that the ratio laid down in the said order applies to the facts and circumstances of the present case.

5.Having regard to the submissions made by the learned counsel on either side, following the order passed by this Court on 19.07.2017 in W.P.No.19493 of 2004, the impugned order dated 08.12.2006 for the assessment year 2003-04 is liable to be set aside. Accordingly, the same is set aside. The Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

va

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

+1cc to Mr.B.Raveendran, Advocate SR.No.16182
+1cc to the Special Government Pleader SR.No.16658

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GN(09/03/2018)