IN THE HI1GH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.13544 of 2010
and
M.P.No.1 of 2010

M/s.Hariharan Spinners Ltd.,
rep. by its Director S.Murukasan,
Kadachanallur Post,
Tiruchengode Road,
Namakkal District. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Tiruchengode(Rural) Circle,
Tiruchengode, Namakkal District. ... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN.No.33913203501/2008-09 dated 24.05.2010 and quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.G.Dhanamadhi, Govt.Advocate(T)

O R D E R

Challenging the assessment order dated 24.05.2010 passed by the respondent for the year 2008-09, the petitioner has come up with the present writ petition.

2.It is the case of the petitioner that they are the manufacturer and dealer in Hankyarn and are an assessee on the file of the respondent. They claimed the Input Tax Credit (ITC) on the sales turnover of PSF Hankyarn of Rs.56,21,850/- at 4% by filing Form -I returns for the assessment year in question. After verification of the same, the respondent proposed to reverse the same and levy tax on the ground that the exemption granted on Hankyarn is applicable to only cotton Hankyarn and it is not applicable to PSF Hankyarn. On receipt of the same, the petitioner sent its reply. However, by the impugned order dated 24.05.2010, the respondent confirmed the reversal of ITC claim and levied tax on the sales of PSF Hankyarn on the petitioner. Hence, this writ petition.

3.The learned counsel for the petitioner submitted that the respondent reversed the ITC claim on the sales of PSF Hankyarn and levied tax on the ground that the petitioner was not eligible for ITC as PSF Hankyarn is not eligible for exemption and the exemption is applicable only to cotton Hankyarn, whereas, Entry 44 of Part B of the Fourth Schedule to TNVAT Act speaks about Hankyarn only and it does not read as cotton Hankyarn and as such, the exemption is applicable to all type of Hankyarn. Hence, the learned counsel prayed to set aside the order impugned herein.

4.Per contra, the learned Government Advocate (Taxes) appearing for the respondent submitted that though the provision of the Act does not specific in this aspect, the object of the Government to grant exemption is to benefit the handloom industries and hence, the same is applicable only to cotton Hankyarn. Thus, according to her, the order passed by the respondent is perfectly right and the same does not call for any interference.

5.Heard both sides and perused the records.

6.Admittedly, the petitioner is engaged in the business of Hankyarn. They claimed the ITC on the sales turnover of PSF Hankyarn of Rs.56,21,850/- at 4% for the assessment year 2008-09. The said claim was reversed by the respondent by the order impugned herein, on the ground that the exemption is applicable only to cotton Hankyarn, as per Entry 44 of Part B of the Fourth Schedule to TNVAT Act.

7.The issue involved herein is settled by this Court in W.P.No.17722/2017 etc. batch, by order dated 13.12.2017, wherein, in paragraph Nos.29, 30 and 32, it has been observed thus:

> "29. In the decision rendered in the case of Grenfell Vs. Inland Revenue Commissioner, reported in [(1876) 1 Ex.D 242, it was held that, 'if a statute contains language, which is capable of being construed in a popular sense, such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words ''popular sense'', that

sense which people conversant with the subject matter with which the statute is dealing would attribute to it.' Applying the said decision to the facts and circumstances case, in popular sense, which the people conversant with the subject matter, referred to hank yarn as containing cotton yarn packed in hank form. Therefore, it is incorrect on the part of the petitioners to state that, in the popular sense, cotton yarn packed in hank form is cotton hank yarn and VSF yarn packed in hank form is VSF hank yarn. If this interpretation is accepted, it would militate against the statutory context of the exemption granted by virtue of the Entry No.44 of Part-B of the fourth schedule to the TNVAT Act.

30. The Hon'ble Supreme Court, in the case of A.I.R. (1967) S.C. 1454, held that, 'while interpreting items in statutes like sales tax, resort should not be made to scientific or technical meaning to such terms but their popular meaning or attached to them by those dealing in that is to say their commercial sense, that is to say, construction of words is to adopt the fitness to the matter of the statute'. If such is interpretation is made, the correct interpretation is to define the term 'hank yarn' referred in Sl.No.44 as cotton hank yarn only.

32. Thus, what is required to be taken note of, is the plain terms, based on which, exemption was conceived and granted, and if this is examined, it is clear that the exemption was to reach particular section of weavers, viz. Handloom weavers. Likewise, the Hank Yarn Packing Notification issued by the Ministry of Textiles, Government of India, 17.04.2003, is to protect the handloom weavers, and under the said statutory notification, the term 'Yarn' has been defined only as cotton yarn. To interpret that Entry 44 to mean to include all types of yarn packed in hank form is incorrect way of interpreting the exemption provision."

8.Following the aforesaid order, where the subject matter is one and the same, this writ petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rm/rk

To
The Assistant Commissioner (CT) (FAC),
Tiruchengode(Rural) Circle,
Tiruchengode, Namakkal District.

+1cc to Mr.S.Ramanathan, Advocate SR.No.42939

+1cc to Government Pleader SR.No.43709

W.P.No.13544 of 2010

RSK(CO)

GMY(30/10/2018)