IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.13741 of 2001

1.M/s.Golden Spinning Mills (P) Ltd.,
Rep. by the Joint Managing Director,
Attur Main Road, Seshanchavadi - 636 111
Salem District.

2.P.Sundaram ... Petitioners

Vs.

1.The Union of India,
Rep. by the Secretary,
Ministry of Revenue and Finance, New Delhi.

2.The State of Tamil Nadu,
Rep. by the Secretary,
Dept. of CT & RE,
Fort St. George, Chennai - 600 009.

3.The Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

4.The Assistant Commissioner (CT),
Salem Rural Division, Salem.

5.The Commercial Tax Officer,
Salem Rural Circle,
Salem. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of the writ of certiorari calling for the records of the fifth respondent in CST.409422/99-2000 dated 06.06.2001 quash the same as illegal contrary to object and scheme of both Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956.

For Petitioners : Mr.S.Rajesh
For M/s.S.Sivanandam

For Respondents : Mr.M.Hariharan
Additional Government Pleader

ORDER

(Order of the Court was made by Dr.VINEET KOTHARI, J.)

The Assessee - M/s.Golden Spinning Mills (P) Limited and another have filed this writ petition, aggrieved by the reassessment notice under Section 16(1) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') dated 06.06.2001, whereby the learned Assessing Authority viz., Commercial Tax Officer, Salem Rural, Salem sought to initiate reassessment proceedings for 1999-2000 for seeking to bring to tax the alleged escaped turnover of polyster - cotton blended yarn by the Assessee during the said year, as according to the said Authority, the Assessee has violated the condition of the Notification in G.O.Ms.No.111, Commercial Taxes and Religious Endowments, dated 7th April 1998, by making the consignment/branch transfers of the goods during the year of cotton yarn to the extent of Rs.1,56,23,382.32.

2.Assailing the same, the learned counsel for the petitioners Mr.S.Rajesh urged before us that not only the earlier Assessing Authority had considered these very facts for the Assessee and had found that there was no violation of conditions of the said Notification reducing the rate of tax on inter-state sale of the specified commodities viz., Man made staple fibres, fibre yarn etc. at 2%, even though the Assessee had made consignment transfers of cotton yarn and therefore, the Assessee was entitled to the concessional rate of 2% on the inter-state sale of man made staple fibres yarn made by it and therefore, on mere change of opinion, without any other material on record, the learned Assessing Authority could not have issued the impugned notice.

3.Drawing the attention of this Court towards the Clarification issued by the learned Special Commissioner and Commissioner of Commercial Taxes under Section 28-A of the Act made on 21.10.1999, the learned counsel submitted that the Assessing Authority had clearly clarified that the petitioner/Assessee himself was entitled to the said concessional rate of 2%. The following relevant portion of the order passed by the Commissioner under Section 28-A of the Act on 21.10.1999 is quoted below for ready reference:

> "Tvl.Golden Spinning Mills Pvt. Ltd., Seshanchavadi, in their letter cited have requested clarification on rate of tax under Sec.28-A of the TNGST Act, 1959, for "man made polyester staple fibre yarn and viscose staple fibre yarn".
>
> The details/pamphlets furnished by the petitioners have been perused, and the following clarification on

rate of tax is issued:-

Man made Staple Fibre Yarn falls under Entry No.27 in Part-C of the First Schedule, taxable at 8%. However, the rate of tax was reduced to 2% as the sale of man made staple fibre yarn by any dealer who does not have any branch transfer or consignment transfer outside the State during the year as per G.O.Ms.No.103/CT & RE Dated 7.4.98 Notn.No.II(i)/CT & RE/ 43(d-2)98. Gazette Dated 7.4.98 as amended by G.O.Ms.No.60 CT Dated 17.3.99 - Notification No.II(i)/ CT/40(a-3)/99 Gazette dated 17.3.99.

The petitioners have effected only local sales and interstate sales of man made staple fibre yarn from 1.4.99. The Stock transfers/Consignment sales of cotton yarn outside the State effected by the petitioners from 1.4.99 do not make the petitioners liable to pay higher rate of tax for the sale of staple fibre yarn when there is no Stock transfer/Consignment sales of man made staple fibre yarn outside the State during the year."

4.Bound by the said order of the learned Commissioner, the learned Assessing Authority, in his earlier Assessment Order passed on 22.03.2001, applied the concessional rate in terms of the Notification dated 7th April 1998 with the following findings:

"6)As regards the proposal to disallow exemption claimed on Rs.15,69,215.65 as consignment sale, the dealers have since furnished the required documents to prove that the movement of goods were otherwise than by way of sale and that the details furnished in Form 'F' declarations are true and correct. Thus they have provided evidence as required under Sec.6A of the CST Act. The documents were verified and found to be in order. Therefore their claim for exemption on the entire consignment sale for Rs.1,56,23,382.32 is allowed."

5.However, on 06.06.2001, the same Assessing Authority issued the impugned notice under Section 16(1) of the Act with the following averments:

"The dealers have proved that the polyster - cotton blended yarn they had sold during 1999-2000 continued more than 51% of staple fibre (man made fibre) According to Notification No.II(i)/CT & RE/22 (a-10)/97 dated 5.3.97a as amended subsequently by Notification II(i)/CTRE/4(c-6)/98 dated 27.3.98. Notification II(i)/CTRE/43(d-7)/98 dt.7.4.98 and Notification No.II(i)/CTRE/40(a-4)/99 dt. 17.03.99 the said goods is taxable at reduced rate of 2% provided the dealer does not have any consignment transfer during the year. However the dealer has effected consignment of cotton yarn for Rs.1,56,23,382.32 during 1999-2000. Therefore the condition prescribed has been violated by the dealer which makes them ineligible for the concessional rate of tax granted by the said notification. As the goods is taxable at 8% under entry 27 under part 'C' of the first schedule to the TNGST Act. It is taxable at 10% without 'C' form declaration. The dealers have not interest produced the said declaration for the concessional rate of tax at 4%."

Against the said notice, the Assessee had preferred the present writ petition.

6.The learned Additional Government Pleader for Revenue however supported the impugned initiation of the proceedings and submitted that the Assessee can be relegated before the Assessing Authority to raise their contentions on merits.

7.We have heard the learned counsel for both parties.

8.The relevant Notification applicable to the facts of the present case is quoted for ready reference:

"(G.O.Ms.No.111, Commercial Taxes and Religious Endowments, 7th April 1998)

1.In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Governor of Tamil Nadu having been satisfied that it is necessary so to do in the public interest hereby directs that the tax payable by any dealer who does not have any branch transfer or consignment transfer during the year, shall be calculated at the reduced rate of two per cent in respect of the sale effected by him in the course of inter-State Trade or Commerce of man made staple fibres, fibre yarn, filament yarn and waste of any of them.

2.This Notification hereby shall come into force on the 7th April 1998 and shall remain in force upto and inclusive of the 26th March 1999."

9.In view of the terms employed in the said Notification dated 7th April 1998, examining the facts of the Assessee itself, the Assessing Authority himself had applied the reduced rate of 2% of the sale of the stable fibres yarn on the Assessee in terms of the said Notification and the said issue stood concluded by the Clarification issued by the learned Commissioner under Section 28-A of the Act on 21.10.1999. Therefore, in our opinion, it was not open to the Assessing Authority to invoke his reassessment powers conferred under Section 16(1) of the Act on the same set of facts. Admittedly, there were no different facts available before the Assessing Authority and the same consignment transfer of cotton yarn to the extent of Rs.1,56,23,382.32 was sought to be made the basis for impugned reassessment proceedings under Section 16(1) of the Act, whereas the said facts had already been considered by the earlier Assessing Authority for the very same period on the basis of a binding order passed by the Commissioner under Section 28-A of the Act on 21.10.1999. The impugned reassessment notice, sitting over the view of Commissioner is nothing but judicial and hierarchical indiscipline on the part of Assessing Authority and misuse of such powers. The impugned reassessment notice does not refer to the binding order of the Commissioner under Section 28-A of the Act at all.

10.Therefore, the impugned reassessment notice under Section 16(1) of the Act by the learned Assessing Authority on 06.06.2001 is based on a mere change of opinion and without any other reason whatsoever and the same is not permissible under Section 16(1) of the Act.

11.In view of the aforesaid, the impugned notice issued by the Assessing Authority dated 06.06.2001 deserves to be quashed and the writ petition filed by the Assessee deserves to be allowed.

12.We accordingly allow this Writ Petition and quash the impugned notice dated 06.06.2001 in CST/409422/99-2000 issued by the Assessing Authority. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Union of India,
Ministry of Revenue and Finance,
New Delhi.

2.The Secretary,
State of Tamil Nadu,
Dept. of CT & RE,
Fort St. George, Chennai - 600 009.

3.The Special Commissioner and
Commissioner of Commercial Taxes,
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4.The Assistant Commissioner (CT),
Salem Rural Division,
Salem.

5.The Commercial Tax Officer,
Salem Rural Circle,
Salem.

6.The Government Advocate,
High Court, Madras.

+1 cc to M/s.S.Sivanandam,Advocate Sr.No. 104316

AKM/20.01.2020/6P- 8C /

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