BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.21847 of 2016
and W.M.P(MD) No. 15616 of 2016

Tvl.Sree Vadivambigai Textile Mills(P) Ltd.,
Represented by its Managing Director,
R.Subramanian .. Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special -
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai – 623 560. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records pertaining to the impugned proceedings of the second respondent in Tin 33365400126/2015-2016 dated 19.09.2016 and quash the same.

For Petitioner :Mr.B.Rooban

For Respondents :Mr.R.Murugan
Additional Government Pleader

O R D E R

An order of assessment for the period 2015-2016 dated 19.09.2016 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') is assailed before me.

2. There was an inspection by the Enforcement Wing on 15.06.2016 in the premises of the petitioner. A statement recorded by the authority at the time of inspection is available on record. Various discrepancies appear to have been noted by the inspecting

team and additions have been proposed for the years from 2009-2010 onwards till 2015-2016. As far as the period 2015-2016 is concerned, discrepancies were alleged in relation to stock available as compared with opening stock recorded as on 01.04.2015. Accordingly, and as a consequence thereof, suppression of sales was alleged.

3. The inspection gave rise to a pre-revision notice dated 10.06.2016, where the assessing authority states that re-conciliation of the physical stock available in the business premises with the unaudited profit and loss accounts for the year 2014-2015 revealed a stock difference. Thus, suppression of turnover was alleged along with equal time addition, reversal of Input Tax Credit (ITC) and penalty in terms of Section 22(5) of the Act. The petitioner responded raising various arguments against the proposals.

4. As far as the stock re-conciliation is concerned, the petitioner specifically pointed out various errors committed by the inspecting team including that an incorrect opening stock has been adopted and that the materials being utilized as work-in-progress had not been taken into consideration in arriving at the proper figure of stock. The petitioner placed specific reliance on the books of accounts and financials drawing attention to the correct and proper figures for comparison. According to the petitioner, if the inspecting team had only adopted proper figures and percentages for comparison along with the actuals that figured in the books of accounts, the number would stand tallied and there would be no discrepancies or suppression, as alleged.

5.The pre-assessment notice had proposed reversal of Input Tax Credit(ITC) merely stating that the claim was 'wrong'. No reason or explanation had been offered by the officer in regard to the alleged error. The petitioner had sought details of the errors as alleged under communication dated 04.08.2016. No effective response was forthcoming from the officer. It is in these circumstances that, even without hearing the petitioner, the impugned order of assessment dated 19.09.2016 has come to be passed. While the impugned order makes reference to the written and oral submissions filed/made by the petitioner, an analysis of the operative portions of the order reveals that the officer has merely proceeded on the basis of events that had transpired at the time of inspection.

6. As far as stock variation is concerned, he states as follows:

> *The dealers have accepted the stock variation at the time of inspection and admitted the above defect in the statement deposed by the dealer at the time of inspection itself.*

7. With regard to sales submission the order states thus:

> *Regarding with the actual suppression arrived for the*

sales suppressions, the explanations of the dealer are not acceptable and since the Enforcement Wing officers arrived the sales suppression only with reference to verification of accounts and records produced by the dealer. Moreover, the dealer admitted the suppressions involved in the inspection at the time of inspection itself. Hence, the contentions raised by the dealer are only after thought which deserved no consideration.

8. Equal time addition is justified as follows:

As far as equal addition, the equal time of additional on the actual suppression was made towards probable omission and defects noticed at the time inspection. In view of the fact, there is willful non-disclosure of taxable turnover which rightly calls for the levy of penalty.

9. As far as reversal of ITC is concerned, the petitioner averred that there is no error in the claim and that all supporting documents in regard to the claim have been produced. The assessing authority in the impugned order however states that ITC to the extent of Rs.2,55,160/- is unsupported by any documents and hence has to be reversed. The assesee is bound to establish the entire claim of ITC in the light of Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2006 (Rules).

10. Upon discharge of the primary burden as above, the onus shifts upon the Officer to examine the claim and either accept/reject the same. In doing so, he will also supply all materials that he intends to rely upon to the petitioner for its explanation/rebuttal.

11. For the reasons as above, the impugned order of assessment is set aside. The assesee will appear before the assessing authority on Wednesday i.e on 14.08.2019 at 10.30 a.m and will produce all materials in support of its stand in regard to the pre-assessment proposals. After hearing the petitioner, the assessing authority will pass order of assessment *de novo*, within a period of four weeks from date of conclusion of personal hearing.

12. This writ petition is allowed in the above terms. No costs. Consequently, connected W.M.P(MD)No.15616 of 2016 is closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To,

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special -Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,Chennai – 600 005.

2.Te Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,No.3, Oversupillai Street,
Sivagangai – 623 560.

+1 CC to M/s.B.ROOBAN, Advocate (SR-79163[F] dated 01/08/2019)

+1 CC to M/s.SPL GP (SR-79284[F] dated 01/08/2019)

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and W.M.P(MD)No. 15616 of 2016
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