IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 14046 to 14049 of 2013

Parvathy Textiles,
Represented by its Proprietor,
P.Parthasarathy,
7/56, Ambika Rice Mill Compound,
Athupalayam Road, Somanur,
Coimbatore District. ... Petitioner in all W.Ps

-vs-

1. The Assistant Commissioner (CT),
Tirupur Central II Circle,
Tirupur.

2. The Joint Commissioner (Enf) CT,
Coimbatore – 641 018.

3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.
.. Respondents in all W.Ps

Prayer in W.P.No. 14046 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in TIN 33252465791/2008-09 dated 31.01.2013, quash the same.

Prayer in W.P.No. 14047 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in TIN 33252465791/2009-10 dated 31.01.2013, quash the same.

Prayer in W.P.No. 14048 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in TIN 33252465791/2010-11 dated 31.01.2013, quash the same.

Prayer in W.P.No. 14049 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a

Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent in TIN 33252465791/2011-12 dated 31.01.2013, quash the same.

For Petitioner in all W.Ps :Mr.S.Ravee Kumar

For Respondents in all W.Ps :Mr. A.N.R.Jayaprathap, Standing Counsel

O R D E R

The petitioner is aggrieved by the impugned orders dated 31.01.2013 passed for the assessment years 2008-09; 2009-10; 2010-11 and 2011-12. By the impugned order, the respondent has confirmed the proposal to levy tax on the purchase of hank yarn, under Section 12 of the TNVAT Act, 2006 on the ground that the petitioner had camouflaged the purchase of cone yarn taxable at 4% as hank yarn liable to nil tax in terms of Section 15 read with IV Schedule to the TNVAT Act, 2006.

2. The findings of the respondent are that it is impossible to use hank yarns in power looms. There is however no basis to come to such a conclusion. In the notice, there is mere allegation that it is impossible to manufacture gada cloth in power looms by using hank yarn and therefore It is to be construed that the assessee have supplied cone yarn only and have manipulated the bills as hank yarn. Therefore, all the local hank yarn purchases from registered dealers were treated as local purchases of cone yarn and liable for levy of tax under Section 12 of the TNVAT Act, 2006.

3. The petitioner has produced evidence in the form of a report of the National Institute of Public Finance and Policy, New Delhi submitted to the Office of the Development Commissioner (Handlooms), Ministry of Textiles, Government of India, New Delhi, which is dated May 1992, bearing title Hank Yarn Diversion to the Powerloom Sector and Analysis of Yarn Price Fluctuations.

4. Thus, there is some material to show that the case of the petitioner cannot be disbelieved altogether. The petitioner is entitled to put forward its defence to the notice issued by the respondent.

5. I am therefore of the view that the issue would require re-consideration and further deliberation by the respondent. The impugned order is therefore quashed and the case is remitted back. The respondent is therefore, directed to pass appropriate orders after considering the evidence in the form of report of the National Institute of Public Finance and Policy, New Delhi of the Hank Yarn Diversion to

the Powerloom Sector and Analysis of Yarn Price Fluctuations now produced by the respondent. In case, the respondent wants to rely any other alternate evidence, it may do so, but before placing such reliance on such material, the petitioner may also be given the details of the same.

6. With the above directions, the writ petition stands disposed of. The impugned orders passed by the respondents are set aside and the case is remitted back to the respondents to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
Tirupur Central II Circle,
Tirupur.

2. The Joint Commissioner (Enf) CT,
Coimbatore - 641 018.

3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

+4cc to Mr.S.Ravee Kumar, Advocate SR.14131
+1cc to Spl Government Pleader SR.14345

W.P. Nos. 14046 to 14049 of 2013

NR(CO)
CB(09/07/2020)