

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.26706, 26707 and 26708 of 2009

M/s.Shyam Textiles Limited,
Represented by
Mr.Chandra Prakash Ram Sisaria,
Director,
Ulumanarapalli Village,
Thally Post,
Denkani Kottai Taluk,
Hosur.

...Petitioner in all WPs

Vs.

1.The State of Tamilnadu
Rep by the Secretary to Government
Commercial Taxes and Relegious Endoursment
Fort St. George
Chennai - 9

2.The Commissioner of Commercial Taxes,
Chepauk,
Chennai - 5.

3.The Assistant Commissioner (CT),
Hosur (South),
Hosur.

...Respondents in WP 26706/2009

4.The Commissioner of Commercial Taxes,
Chepauk,
Chennai - 5

...Respondents in WP 26707/2009

5.The Assistant Commissioner (CT)
Hosur (South),
Hosur.

...Respondents in WP 26708/2009

Prayer in WP.No.26706/2009 : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring item 22A, Part E of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, read with section 3 (2) of the Tamil Nadu General Sales Tax Act, 1959, in so far as the said entry levies/purports to levy sales tax on imported polyster knitted pile fabrics being declared goods, as being ultra vires and violative of Article 286 of the Constitution and Sections 14 and 15 of the Central Sales Tax Act, 1956 and therefore unconstitutional, invalid and illegal in so far as the petitioners are concerned.

Prayer in WP.No.26707/2009 : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the 1st respondent in Acts Cell II/17673/2008 dated 28.3.09 and quash the same as being without jurisdiction and contrary to Article 286(3) of the Constitution and Sections 14 and 15 of the Central Sales Tax Act, 1956.

Prayer in WP.No.26708/2009: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the 2nd respondent in TNGST, 3361107/2000-01 dated 27.5.09 and quash the same as being without jurisdiction and contrary to Article 286 (3) of the Constitution and Sections 14 and 15 of the Central Sales Tax Act, 1956 and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth [in all WPs]

For Respondents: Mr.R.Swarnavel
Government Advocate(Taxes)
[in all Wps]

COMMON ORDER

[Order of the Court was made by Dr. Justice VINEET KOTHARI]

These three Writ Petitions are being disposed of by common order.

2.The Assessee M/s.Shyam Textiles Limited filed these writ petitions inter alia challenging the clarification issued by the learned Commissioner of Commercial Taxes under Section 28A of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") holding that "Imported Pile Fabrics" was taxable at 16% as per entry No.22A Part E of the First Schedule to the TNGST Act, 1959 for the Assessment year 2000-01 in question. The consequential assessment order passed for this assessment period

2000-01 by the learned Assessing Authority against the present Assessee on 27.05.2009 is challenged in another writ petition by which the learned Assessing Authority imposed the 16% Sales Tax in terms of the order passed by the learned Commissioner.

3.The third writ petition has been filed by the Assessee challenging the entry No.22A Part E of the First Schedule to the Act on the contention raised by the Assessee that the same is contrary and in conflict with the Section 14(vii) of the Central Sales Tax Act, 1956 defining "the declared goods".

4.These writ petitions were entertained in the year 2009 and an interim order was passed by the Court on 22.12.2009 and the respondents have not filed any counter, the interim order was extended until further orders on 15.03.2020.

5.The matter was taken up for final hearing today, the learned counsel for the Assessee Mr.V.Srikanth, urged before us that the Assessee had imported 30000 Yard of Polyester Knitted Pile Fabric Fourway under Bill of Entry dated 15.11.2000 and had declared to be falling under the Chapter 6001.92 of the Customs Excise Tariff and since Section 14(vii) of the CST Act, 1956 which gives the list of the declared goods with the enjoined restrictions on the rate of tax and point of sales contained in Section 15 thereof includes "man made fabrics" covered under Tariff Heading 60.01 of the Schedule to the Central Excise Tariff Act, 1985 which is akin to the entry heading 6001.92 declared in the Bill of Entry of the Customs Tariff and therefore, the goods in question being declared goods could not be taxed at the rate of 16% as per the clarification issued by the Commissioner under Section 28A of the TNGST Act. Therefore, he submits that the Assessment Order deserves to be quashed by exercise of writ jurisdiction of this Court and the entry 22A itself deserves to be declared ultra vires under Section 14(vii) of the CST Act, 1956.

6.Per contra, the learned counsel for the Revenue submitted that the Assessee imported pile fabrics during the year in question were not the declared goods and therefore having taxed at the rate of 16% under entry No.22A in terms of the clarification issued by the learned Commissioner on 28.03.2009.

7.We have heard the learned counsels for some time and perused the records. The crux of the problem lies in the order passed by the learned Commissioner under Section 28A of the Act,

which is as brief and non speaking as it could be. The learned Commissioner, while exercising the powers under Section 28A of the Act, which empowers him to pass a quasi judicial order on any point concerning the rate of tax under the Act and which is a wide and significant quasi-judicial power of Advancing Ruling given to the higher authority of the Commercial Excise Department with a view to remove the difficulties and doubts about the rate of tax, has issued such orders prima facie without application of mind at all. The said order firstly has been issued in the form of a letter instead of an order and we quote below the one liner order of the learned Commissioner dated 28.03.2009.

"Tvl.Shyam Textiles Limited, Denkenikottai, in the reference first cited, have requested to clarify the rate of tax on "Imported Pile Fabrics" under the Tamil Nadu General Sales Tax Act, 1959.

The petitioner is hereby informed that "Imported Pile Fabrics" was taxable at 16% as per entry 22A Part E of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 during the year 2000-01.

Sd/- P.S.Muthuveeru,

For Principal Secretary/Commissioner of
Commercial Taxes"

8.The non discussion of the facts and controversy, no reasons assigned in the order and simply holding the commodity in question viz., Imported Pile fabrics to be taxable at 16% under the Entry 22A, in our opinion, is no order in the eye of law at all under Section 28A of the Act.

9.We are dismayed at the manner in which the powers under Section 28A of the Act have been exercised by the learned Commissioner in the present case. A responsible act of deciding the rate of tax on a particular commodity ought to have discussed the nature of commodity, the evidence adduced by the Assessee, the reasons given by the learned Commissioner for holding a particular rate of tax applicable to the commodity in question. None of these aspects relevant and necessary for deciding a controversy under Section 28A of the Act have been reflected in the impugned order and that has given rise to the present litigation, which has been pending on the board of this Court for the last 11 years without any useful purpose.

10.The Assessee not only challenged this order, but under the garb of this order even laid a frivolous challenge to the entry 22A itself without disclosing how the said entry was in

any way in conflict with Section 14(vii) of the CST Act. Section 14(vii) of the CST Act gives the list of Declared Goods and it includes in clause (vii) thereof description of various types of 'man made fabrics' covered under heading 60.01 of the Central Excise Tariff Act, 1985. Unless one establishes that the commodity in question falls under the particular category of Declared Goods, there is no question of disbelieving the applicability of the Entry 22A of the TNGST Act which on its own force applied a rate of 16% on the entry relating to 22A "Textiles Imported into India from foreign country" under the First Schedule to the Act. This Entry 22A is wide enough to cover even the goods in question but we are not expressing any opinion on the same. As far as the challenge to the assessment order is concerned, since to the said Assessing Authority simply followed, as he was bound to do, the alleged clarification issued by the learned Commissioner under Section 28A of the Act it is only a consequential order, whose fate will depend upon fate of the order of the learned Commissioner himself under Section 28A of the Act.

11. We have observed above that the said order under Section 28A of the Act is non est and not sustainable on the face of it. Therefore, we set aside the said order of the learned Commissioner dated 28.03.2009 and remit the matter back to the said Authority and direct the Assessee to appear before the said Authority so that a detailed, proper and well reasoned order can be passed by the learned Commissioner in exercise of his power under Section 28A of the Act.

12. Before parting, we would like also to observe that some such other non speaking orders passed by the Commissioner in exercise of Section 28A of the Old TNGST Act, 1959 and Section 48A of the TNVAT Act, 2006 have come on our notice quite often and some kind of non-speaking orders are passed by the learned Commissioners without appreciating the responsibility which lies upon them to pass well reasoned quasi judicial orders. Under these powers, such non speaking orders result in unnecessary litigation in the Constitutional Courts and there seems to be no check on such casual exercise of powers by the responsible officers of the Commercial Taxes Department. We only wish to bring it to the notice of the Senior Officers of the Department was that they realise their duty and responsibility in passing appropriate reasoned orders in such cases.

13. Since we have directed above for the fresh assessment order to be passed, at this stage, the impugned order passed in the present case on 27.05.2009 for Assessment Year 2000-01 is

set aside. We are not inclined to go into the challenge to the Entry 22A of the Schedule for the reasons aforesaid and because there was no proper grounds laid down by the learned Single Judge.

14. With these observations, we dispose of these Writ Petitions by relegating the Petitioner/Assessee before the learned Commissioner so that fresh orders are passed under Section 28A of the Act and then consequential appropriate assessment orders be passed in the case of the Assessee for Assessment Year 2000-01 involved in the present case. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Commissioner of Commercial Taxes,
Chepauk,
Chennai - 5.
2. The Assistant Commissioner (CT),
Hosur (South),
Hosur.
3. The State of Tamilnadu
Rep by the Secretary to Government
Commercial Taxes and Religious Endowments
Fort St. George
Chennai - 9

+1cc to Mr.V.Srikanth, Advocate, S.R.No.21786

+1cc to the Government Pleader, S.R.No.21786

W.P.Nos.26706, 26707 and 26708 of 2009

GMR (CO)
RN (28/05/2020)