IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No. 24593 of 2015
and
M.P. No.1 of 2015

M/s.Dandayudapani Spinning Mills,
Represented by its Partner,
No.274/2A, 2B, Chinnakammalapatti,
Kammalapatti Post,
Palladam - 641 671. ... Petitioner

Vs

1.The Commercial Tax Officer,
Palladam Circle, Palladam.

2.The Commercial Tax Officer,
Enforcement Group - VII,
Coimbatore. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in his proceedings in TIN 33826244064/2013-14 and quash the impugned order dated 26.06.2015.

For Petitioner : Ms.Hema Muralikrishnan
For Respondents : Mr.R.Swarnavel
Government Advocate

ORDER

The petitioner is aggrieved by the impugned assessment order dated 26.06.2015 passed by the 1st respondent pursuant to a notice dated 05.03.2015.

2. The learned counsel for the petitioner submits that the disputed tax for an amount of Rs.17,62,820/- has been appropriated by the respondents by making a spot collection of Rs.18,00,000/- on 29.10.2014 when there was an inspection at the premises of the petitioner.

3. At the time of inspection, statements were obtained from the petitioner to the effect that the petitioner had wrongly availed the exemption by disguising the clearance of Cone Yarn as Hank Yarn and that there was also discrepancy in the stock, on which the tax was to be paid.

4. The statements were recorded from the petitioner dated 31.10.2014. However, while issuing notice dated 05.03.2015, the issue relating to discrepancy in the stock statement was not mentioned. There was only a proposal to revise the assessment under Section 27(1) (a) of the TNGST Act, 1959.

5. The tax liability was arrived as follows:-

Stock Value:

Hank Yarn Court	*Stock in Kgs*	*Rate*	*Stock Value in Rs.*
40's Stock	16344	280	45,76,320
30's Stock	2179	280	6,10,120
Total			51,86,440

Hank Yarn Sales from January 2014 to March 2014:

Month	*Local Value Rs*	*Interstate Sales Rs.*	*Total Sales Rs.*
January 2014	72,24,678	14,83,500	87,08,178
February 2014	49,30,500	4,80,000	54,10,500
March 2014	70,37,210	16,58,750	86,95,960
Total	1,91,92,388	36,22,250	2,28,14,638
		Less : Hank Yarn Stock*	51,86,440
		Treated as sales of Cone Yarn	1,76,28,198
		Add : Equal addition	1,76,28,198
		Total	3,25,56,396
		Tax Due @ 5%	17,62,820

Hence it was proposed to revise the assessment under Section 27 (1) (a) as below:

Sales of Cone Yarn camouflage as Hank Yarn : Rs.1,76,28,198
Add : Equal Addition : Rs.1,76,28,198

Total Proposed : Rs.3,52,56,396 @ 5%

Penalty under Section 27(3) is also proposed

6. In the impugned order, the issue relating to discrepancy in the stock statement has been included. The learned counsel for the petitioner submits that in case there was a dispute among the partners of the petitioner, and therefore a proper reply could not be given and thus equal addition of

Rs.1,76,28,198/- towards the sale of Hank Yarn as Cone Yarn needs to be addressed afresh.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

8. In this case a spot collection of Rs.18,00,000/- was made and therefore no prejudice will be caused to the Revenue if one more opportunity is given to the petitioner to rebut the proposals in the notice.

9. In the light of the above discussion, the impugned order passed by the 1st respondent is set aside and the case is remitted back to the respondents to pass a fresh order within a period of 60 days from the date of receipt of a copy of this order. The petitioner is given liberty to file a reply/representation within a period of 30 days from the date of receipt of a copy of this order. It is needless to state that before passing final order, the respondents shall also call upon the petitioner for a personal hearing.

10. This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

To
1.The Commercial Tax Officer,
Palladam Circle, Palladam.

2.The Commercial Tax Officer,
Enforcement Group - VII,
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate SR.NO.1341
+1cc to The Special Government Pleader SR.NO.1359

AKM/23.02.21/ 3P-5C/

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