IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.03.2021
CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN
W.P.Nos.30225 to 30231 of 2015
and
M.P.Nos.1, 1, 1, 1, 1, 1 & 1 of 2015
(Through Video Conferencing)

M/s. Winndsor Cotton Mills (P.) Limited,
(Represented by its Chief Executive Officer
Vivek Dwivedi)
SF No.429, Puthupalayam Village,
Pasur (P.O.), Annur,
Coimbatore 641 653. ... Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner (C.T.),
Avinashi Assessment Circle,
Avinashi, Coimbatore.

2.The Assistant Director,
Regional Office of the Textile Commissioner,
Chindamani Co-operative Market Complex,
RS Puram, Coimbatore 641 002. ... Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarifi, calling for the records on the files of the first respondent herein in TIN:3383-2203669/2007-08, TIN:3383-2203669/2009-10, TIN:3383-2203669/2010-11, TIN:3383-2203669/2011-12, TIN:3383-2203669/2012-13, TIN:3383-2203669/2013-14 and TIN:3383-2203669/2014-15 all dated 18.08.2015 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.N.Sriprakash & N.Prasad in all W.Ps.

For Respondents : Mr.G.Dhanamadhri, Government Advocate in all W.Ps.

COMMON ORDER

By this common order, all the Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged

the Assessment Orders passed by the first respondent for the Assessment Years 2007-2008, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 & 2014-2015 respectively.

3. It is the case of the petitioner that the petitioner is engaged in manufacture of yarn and there were three different kinds of yarns which were cleared by the petitioner, namely Hosiery Yarn, Yarn in Cone and Hank Yarns. It is submitted that the Enforcement Wing Officers conducted an Inspection in the factory of the petitioner from 25.07.2014 to 29.07.2014 pursuant to which notice for revising the Assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 was issued to the petitioner which has culminated in the impugned orders.

4. It is submitted that the impugned orders have been passed without following the principles of natural justice and are merely based on the fact that at the time of the inspection by the enforcement officer, only one of the ten reeling machines was in a running conditions and for all the above assessment orders, it has been wrongly concluded that Cone Yarn was cleared as Hank Yarn and thus the petitioner evaded tax. The learned counsel for the petitioner submits that the impugned orders confirm the demand based on D3 Notices issued as per the investigation of the Enforcement Wing headed by the Joint Commissioner of Commercial Tax Department, Officer, Assessing Officer. He submits that the Assistant Commissioner of (Commercial Taxes) are bound by such recommendations of the Commissioner of Enforcement Wing. He therefore submits that there should be a direction to the first respondent to pass independent orders uninfluenced by the findings of the Enforcement Wing of the Commercial Tax Department.

5. The learned counsel for the petitioner further submits that this Court in Hindustan Unilever Limited Vs. Deputy Commissioner (CT)-II, Large Tax Payers Unit, Egmore, Chennai and Another, (2016) 95 VST 296 (Mad) has given the guidelines to be followed by the Assessing Officer. In compliance with the same, the Commercial Tax Department after advent of GST with effect from 01.07.2017 has also issued a Circular No.3/2019 dated 18.01.2019, wherein, a reference has been made to the earlier Circular date 28.01.2014.

6. The learned counsel for the petitioner further submits that in the context of new circulars issued on 18.01.2019, this Court by its order dated 05.08.2020 in Tvl.Tarun Creation Vs. The Commercial Tax Officer, in W.P.Nos.15077 to 15079 of 2012 and batch cases, has quashed the proceedings giving liberty to the assessees to file their objections with all supporting documents to pass orders on merits.

7. The learned counsel for the respondents confirms that the impugned orders have been passed without giving an opportunity of hearing to the petitioner.

8. Considering the fact that the impugned orders have been passed in violation of principles of natural justice, I am inclined to set aside the impugned orders and remit the cases back to the first respondent or any other officers nominated after the implementation of GST to pass fresh order after giving opportunity to the petitioner of being heard.

9. The petitioner is also given liberty to file additional reply / objections, if any, within a period of thirty days from the date of receipt of a copy of this order. Since already guidelines have been laid down in the decision of this Court in Hindustan Unilever Limited referred to supra and the decision of this Court in Tvl.Tarun Creation referred to supra which has incorporated the Circular No.3/2019 dated 18.01.2019, the first respondent or any other officers nominated after the implementation shall keep in mind the above two decisions and the said Circular dated 18.01.2019 while passing the fresh orders.

10. Since the dispute pertains to the Assessment Years 2007-2008, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 & 2014-2015, orders shall be passed within a period of six months from the date of receipt of a copy of this order. Needless to state, before passing such orders, the petitioner shall be heard.

11. Accordingly, these Writ Petitions are disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VII)

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (C.T.),
Avinashi Assessment Circle,
Avinashi, Coimbatore.

2.The Assistant Director,
Regional Office of the Textile Commissioner,
Chindamani Co-operative Market Complex,
RS Puram, Coimbatore 641 002.

+1CC TO MR.N.INBARAJAN, ADVOCATE, SR.NO. 13385
+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 14019

W.P.Nos.30225 to 30231 of 2015 and
M.P.Nos.1, 1, 1, 1, 1, 1 & 1 of 2015

SKY(CO)
KKN 30.04.2021