BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7276 of 2017
and WMP(MD)No.5702 of 2017

M/s.Anar Textiles,
rep.by its Partner,
M.Chellappan ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Karur (West) Assessment Circle,
No.1, Kamadhenu Nagar,
Pugulur road, Karur - 639 006.

2.The Appellate Assistant Commissioner (CT),
Commercial Taxes Buildings,
Court campus, Cantonment, Trichy-1.

3.The Joint Commissioner (CT) SMR-II,
Ezhilagam, Chepauk, Chennai - 600 005.

4.The Sales Tax Appellate Tribunal,
Additional Bench, Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai - 20. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the case from the file of the first respondent herein, quash the impugned demand order of the first respondent in TNGST : 3780508/1995-96 dated 30.03.2017 issued for the TNGST assessment year 1995-96.

For Petitioner : Mrs.Lakshmi Sriram
For Respondents : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner was a dealer registered with the first respondent under TNGST Act, 1959. The petitioner suffered an order of assessment for the year 1995-96. Questioning the said order dated 27.03.1997, the petitioner filed an appeal before the appellate authority. The appellate authority by order dated 03.10.1997 allowed the assessee's appeal in toto. This was taken by way of suo motu revision by the Joint Commissioner (CT), Chepauk, Chennai. The petitioner showed cause to the said suo motu revision. In the mean while, the department also filed an appeal before the Sales Tax Appellate Tribunal, Madurai. In view of the same, the Joint Commissioner/R3 dropped the suo motu revision proceedings. It is relevant to mention here that the State while filing MTSA No.258 of 1999 confined their appeal only to what is known as hank yarn obligation of the assessee. This is clear from the relevant claim in the appeal. It is relevant to extract it as such :

"Relief claimed in appeal

(a) Turnover determined by the assessing authority passing the assessment order (disputed) : Rs.1,79,07,510/-.

(b) Turnover confirmed by the Appellate Asst.Cmmr.(Comml.Taxes) or Appellate Deputy Commissioner as the case may be : Nil.

(c) If turnover is disputed (a) disputed turnover : Rs.1,80,466/- at 8%, (b) Tax due on disputed turnover : Rs.14,437/-.

(d) If rate of tax is disputed (i) turnover involved : --- (ii) amount of tax disputed :---."

3.There can be no doubt that the disputed turn over in the appeal was Rs.1,80,466/ and the tax due on disputed turn over was Rs.14,437/-. The issue of hank yarn obligation was then pending before the Hon'ble Apex Court. The Supreme Court decided the issue against the assessees and on that basis, MTSA No.258 of 1999 was allowed on 20.10.2016. Now the said order will have to be given effect to by the first respondent. The grievance of the petitioner is that while giving effect to the same, the authority had virtually ignored the order passed by the appellate authority. The grievance of the petitioner in respect of the impugned order dated 30.03.2017 is that the first respondent has not even taken note of the scope of the appeal filed by the State before the Tribunal.

4.The writ petition is opposed by the respondents. The respondents have filed a counter affidavit. In the counter affidavit, in Paragraph No.5, the first respondent claims that he had levied tax and penalty only on the issue of Hank Yarn obligation. Now, it is for this court to test the correctness of the said assertion. In the impugned order, the taxable turn over has been redetermined as follows :

03-04-2017

Proceedings of the Assistant Commissioner(CT), Karur(West) Circle, Karur
Present: Tmt. T Jeyanthi

Dated 30/03/2017

TNGST: 3780508/1995-96

Sub: TNGST Act 1959 – Tvl. Anar Textiles, Karur – assessment for 1995-96 – appeal allowed by the AAC(CT), Trichy – cross appeal filed – appeal modified – revised orders passed.

Ref: 1) This office proceedings in TNGST :3780508/1995-96 Dt.27/03/1997.
2) Proceedings of A.A.C.(CT), Trichy in AP No.754/97/Dt.03/10/1997.
3) This office revised proceedings in TNGST: 3780508/1995-96 Dt.04/11/1997.
4) Proceedings of ST AT(AB) Madurain in MTA No.258/1999/Dt.20/10/2016.

ORDER:

In pursuance of the orders of the Sales Tax Appellate Tribunal (Additional Bench) Madurai in the reference 4th cited, the assessment of Tvl. Anar Textiles, Karur is hereby revised for the year 1995-96 under TNGST Act 1959 as follows:-

Total turnover re-determined ₹.3,88,44,176/-
Taxable turnover re-determined ₹.3,81,10,023/-

Taxable turnover	Tax	SC	Additional sales tax ₹
₹. 2,01,36,053/- @ 2%	4,02,721	----	4,02,721
₹. 1,77,27,044/- @ 3%	5,31,811	----	1,77,270
₹. 66,460/- @ 5%	3,323	498	1,329
₹. 1,80,466/- @ 8%	14,437	2,166	3,609
Total due	9,52,292	2,664	5,84,929
Arrears eligible for deferral scheme	4,02,560	----	4,02,560
Arrears not covered by deferral scheme	5,49,732	2,664	1,82,369

Particulars	Tax	SC	Additional sales tax ₹
Due	9,52,292	2,664	5,84,930
Amount paid	3,484	498	1,490
Balance due	9,48,808	2,166	5,83,440
	Notice in Form 'B3' issued	Notice in Form 'U' issued	Notice in Form 'N3' issued

Penalty u/s 12(3)(b) re-fixed	Nil
Penalty paid	Nil
Balance	Nil

To

Tvl. Anar Textiles,
No.9, Sengundapuram, 2 nd Cross,
Karur – 2.

Assistant Commissioner (CT) Karur (West)

30·3·17
Assistant Commissioner (CT)
Karur (West), Karur.

5.A mere look at the above table would show that the taxable turn over of the assessee had four components. They are as follows :

First sale of cotton hand yarn	Rs.2,01,28,000 @ 2%.
Exemption claimed on inter-state purchase of cotton disallowed and treated as last purchase	Rs.1,77,27,044 @ 3%.
First sale of cotton waste and cotton yarn waste.	Rs.66,499 @ 5%
Hank yarn sales	Rs.1,80,466 @ 8%

6.The appeal was confined only to the fourth component, namely, Hank Yarn Sales. However, the other three issues had already been set at rest by the order of the appellate authority. Therefore, the first respondent clearly erred in re-opening the concluded issues. On this sole ground, I am constrained to interfere with the order impugned in this writ petition. Accordingly, the impugned order is quashed. The writ petition is allowed. The matter is remitted to the file of the first respondent to pass orders afresh in accordance with law by raising a demand for Hank Yarn obligation whose turn over was Rs.1,80,466/- and the tax due was at Rs.14,437/- during the relevant point of time. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SKM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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4.The Sales Tax Appellate Tribunal,
Additional Bench, Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai - 20.

+1 CC to M/s.SPL GP (SR-9687[F] dated 09/03/2021)
+1 CC to M/s.LAKSHMI SRIRAM, Advocate SR-9888[F] dated 10/03/2021

W.P.(MD)No.7276 of 2017
and
WMP(MD)No.5702 of 2017
08.03.2021

VR(CO)
TR(31.03.2021) 5P 7C