IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2022
CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No. 5884 of 2006
and
W.M.P. No. 6377 of 2006

M/s. Seematti Sarees
Rep by its Proprietorix
Tmt. C.A. Beevi Jhon
18,19,20, Suba Govindam Bldgs,
Imperial Road,
Cuddalore 607 002 .. Petitioner

Versus

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
Main Bench, Chennai.

2.The commercial Tax Officer
Cuddalore Town Circle
Cuddalore .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the First respondent in its proceedings in STA. No. 599/2001 dated 17.11.2005 and quash the same as illegal and contrary to the principles of assessment.

For Petitioner	:	Mrs. R. Hemalatha
For Respondents	:	Mr. NRR.Arun Natarajan Special Government Pleader

O R D E R
(Order of the court was made by R. Mahadevan, J)

This writ petition is filed by the petitioner, calling in question the order dated 17.11.2015 passed by the first respondent in STA. No. 599 of 2001 and quash the same as illegal and contrary to the principles of assessment.

2. The petitioner is a dealer registered under the Tamil Nadu General Sales Tax Act (in short the Act) engaged in the business of purchase and sales of goods in the nature of textiles, sarees and mill goods, which according to them, are exempted from payment of tax under the Act. Therefore, for the assessment year 1992-1993, the petitioner reported a total turnover of Rs.35,96,693/- and nil taxable turnover. However, the second respondent determined the total taxable turnover as

Rs.53,48,356/- purportedly on the ground of non-production of books of accounts. On appeal by the petitioner, the appellate authority remanded the matter back to the second respondent upon production of books of accounts. After remand, by an order dated 14.01.2000, the second respondent passed an order determining a taxable turnover of Rs.17,51,663/-, who arrived at such a conclusion based on the inspection conducted by the Enforcement wing officials on 22.04.1993 at the place of business of M/s. Seematti Silks at No.289, Tenkasi Road, Rajapalayam and concluded that the said place of business at Rajapalayam is the branch established by the petitioner. During the course of such inspection, 35 slips were recovered by issuing D-7 slips in the aforesaid premises, which formed the basis for the assessment by the second respondent. According to the second respondent, out of the 35 slips recovered, two slips pertains to the business transaction the said firm had with the petitioner. But the petitioner would contend that the said firm is not their branch firm as concluded by second respondent and therefore, the entire assessment is vitiated.

3. As against the order of assessment passed by the second respondent, the petitioner filed an Appeal before the first appellate Authority, who modified the order passed by the second respondent and confirmed the actual suppression to the tune of Rs.11,65,775/- @ 5% besides deleting the 50% probable addition made on the above sustained turnover. Aggrieved by the same, the petitioner filed a further appeal before the first respondent in T.A. No. 518 of 2001 and it was dismissed for default. Therefore, the petitioner has taken out an application to restore the appeal. In the meantime, the department preferred an appeal in S.T.A. No. 599 of 2001 as against the portion of the deletion ordered by the Appellate Authority. The Tribunal, without hearing the petitioner, has allowed the appeal filed by the Department in S.T.A. No. 599 of 2001 by setting aside the order passed by the Appellate Authority. Challenging the same, the present Writ Petition is filed by the petitioner.

4. The learned counsel for the petitioner would contend that the inspection conducted by the Enforcement Officials in the premises of Seemati Textiles, Rajapalayam or the recovery of incriminating materials during such search has nothing to do with the business of the petitioner. Even though the petitioner has denied having any branch office at Tenkasi, the second respondent refused to accept it without any rhyme or reason. Further, the statement of one S.K.M. Abubakher, Son of Nagoor Meeran was recorded during the course of inspection which was relied on by the second respondent to pass the order of assessment, however, the copy of such statement has not been furnished to the petitioner. Above all, the appeal filed by the department in S.T.A. No. 599 of 2001 was allowed exparte without considering the fact that the petitioner has already filed an appeal in T.A. No. 518 of 2001 and it was dismissed for default and the petitioner has also filed an application for restoration. When that be so, the Tribunal ought to have

allowed the restoration petition and taken up for hearing T.A. No. 518 of 2001 filed by the petitioner along with S.T.A. No. 599 of 2001 filed by the Department for joint disposal, but it was not done. Even in the order dated 17.11.2015 passed in STA. No. 599/2001 the first respondent has not assigned any reason adverting to the business relationship between the petitioner's firm and the business firm at Rajapalayam where an inspection was conducted and materials recovered. In any event, the first respondent has passed a cryptic order without appraising the merits of the contentions urged by the petitioner and it warrants interference by this Court.

5. On the above contentions of the learned counsel for the petitioner, we have heard the submissions made by the learned Special Government Pleader for the respondents and perused the materials placed on record.

6. It is not in dispute that petitioner has filed returns disclosing a total turnover of Rs.35,96,693/- and Nil taxable turnover for the assessment year 1992-1993 on the ground that they are dealing in purchase and sales of goods such as textiles, sarees and mills goods which are exempted from tax under the Act. However, the second respondent refused to accept such plea of the petitioner and proceeded to determine the tax at Rs.53,48,356/- purportedly on the ground that the petitioner did not produce the books of accounts. Aggrieved, the petitioner filed a statutory appeal and the appeal was allowed remanding the matter back to the second respondent for fresh consideration of the plea of the petitioner based on the books and accounts made available. After remand, the second respondent did not proceed with the assessment on the basis of the books of accounts produced by the petitioner, rather, the recovery of 25 slips, made during the course of inspection on 22.04.1993 from a firm called Seematti Silks at Tenkasi Road, Rajapalayam, relied on to pass the order of assessment. It was the fervent appeal of the petitioner that Seematti Silks at Rajapalayam is not their branch and the business carried on by them has no nexus to their business. It was also contended that the assessment order was passed on the basis of a statement recorded from one S.K.M. Abubakher, Son of Nagoor Meeran during the time of inspection of Seematti Silks at Rajapalayam, but a copy of the statement so recorded had not been furnished to the petitioner. Notwithstanding such objection, the second respondent proceeded to conclude the assessment. In the order dated 14.01.2000 passed by the second respondent, it was stated that "the dealer at the time of inspection has admitted that the Rajapalayam Show room was the branch of Cuddalore Seematti Silks and used TNGST No. 581917." However, it was the contention of the petitioner throughout that Seematti Silks at Rajapalayam is not their branch firm. Further, we find that there was no reference made as to whether the statement obtained from one Abubakher was furnished to the petitioner or not. This is more so that the petitioner disputes that they have no branch at Sivakasi, Rajapalayam. Thus, the second respondent, without adverting to the plea as to whether there is any business nexus

between the petitioner firm and the firm called Seematti Textiles at Rajapalayam, has determined the taxable turnover of the petitioner's firm.

7. Aggrieved by the order dated 14.01.2000 of the second respondent, the petitioner has filed an appeal in No. 171 of 2000. Even in the appeal filed before the Appellate Authority, it was the stand of the petitioner that the firm by name Seematti Silks at Rajapalayam has nothing to do with their business activity. This was recorded by the Appellate Authority in para No.4 of the order and granted partial relief, yet, the petitioner preferred a further appeal before the first respondent.

8. It is evident from the order passed by the first respondent that there was no representation made on behalf of the petitioner at the time of passing the order dated 17.11.2005, which is impugned in this writ petition. The order dated 17.11.2005 was passed in the appeal preferred by the Department. However, in the order dated 17.11.2005, the first respondent has not even adverted to the second appeal filed by the petitioner in T.A. No. 518 of 2001 and which was dismissed for default. This was also clearly stated by the petitioner in their written statement filed before the first respondent on 10.09.2003 in S.T.A. No. 599 of 2001 filed by the Department, which is enclosed in page No. 10 to 13 of the typed set of papers filed along with this writ petition. When the first respondent had taken up for disposal the appeal filed by the Department, it is not known as to why the first respondent has not even adverted to or made any reference about the appeal filed by the petitioner in T.A. No. 518 of 2011. Even assuming that there was no representation on behalf of the petitioner, the first respondent, while passing the order dated 17.11.2015, ought to have made reference about the appeal filed by the petitioner in T.A. No. 518 of 2011. In fact, the appeal preferred by the petitioner in T.A. No. 518 of 2011 is earlier in point of time and only thereafter, the revenue has filed the instant appeal in S.T.A. No. 599 of 2011, which was allowed by the Tribunal. While so, as rightly pointed out by the learned counsel for the petitioner, the first respondent ought to have refrained from taking up the appeal in S.T.A. No. 599 of 2011 before taking up the restoration petition filed by the petitioner to restore T.A. No. 518 of 2011.

9. In the written arguments submitted on behalf of the petitioner, it was the specific stand of the petitioner that the business firm by name Seematti Textiles at Rajapalayam is not their branch establishment while so, the inspection conducted in such firm or the documents recovered therefrom cannot form the basis for passing the order of assessment by the Assessing Officer. However, on perusal of the order dated 17.11.2005, from para No. 7 to 10, there was not even a reference made about the stand of the petitioner that the firm at Seematti Textiles, Rajapalaym is not their branch establishment. In fact, the first respondent proceeded as though an inspection was conducted in the business

establishment of the petitioner. Therefore, this Court is of the view that the order passed by the first respondent on 17.11.2005 cannot be sustained.

10. In the result, the order dated 17.11.2005 passed in S.T.A. No. 599 of 2001 is set aside. The writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rsh/kas

To

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal,
Main Bench, Chennai.
2.The commercial Tax Officer,
Cuddalore Town Circle
Cuddalore.

+1 cc to Spl Government Pleader (Tax) Sr.NO. 9416

WP No. 5884 of 2006

PMK(CO)
A.SK(07/03/2022)