IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. Nos. 1274, 1275, 1276, 1277, 1278 and 1280 of 2022
and
CMP Nos. 8033, 8036, 8038, 8039, 8042, 8043,
8044, 8047, 8048, 8049, 8050 of 2022

Sri Ayyan Textile Mills (P) Ltd.,
represented by its Director
J. Kulasekaran
S.F.No.414, Mettupalayam Road,
Narasimmanaickenpalayam,
Coimbatore 641 031 ... Appellant in all the appeals/ Petitioner

Versus

The Assistant Commissioner (ST)
Thudiyalur Assessment Circle
Coimbatore. ... Respondent in all appeals/ Respondent

Appeals filed under Clause 15 of the Letters Patent against the common order dated 02.12.2021 passed by the learned Single Judge in W.P. Nos. 10819, 10824, 10825, 10826, 10829 and 10833 of 2019.

Prayer in W.P. Nos. 10819, 10824, 10825, 10826, 10829 and 10833 of 2019.

Writ Petitions filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN No.33292025971/2011-2012, TIN No.33292025971/2012-2013, TIN No.33292025971/2013-2014, TIN No.33292025971/2014-2015, TIN No.33292025971/2015-2016 & TIN No.33292025971/2016-2017, dated 31.12.2018 and quash the same.

For Appellant : Mr. N. Inbarajan
in all the appeals

For Respondent : Mr. Richardson Wilson
Additional Government Pleader
in all the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the materials available on record.

2.Challenging the assessment orders dated 31.12.2018 passed by the respondent relating to the assessment years 2011-12 to 2016-17, the appellant / assessee preferred the writ petitions viz., W.P. Nos. 10819, 10824, 10825, 10826, 10829 and 10833 of 2019, contending that Hank Yarn is an exempted commodity falling under serial no.44 part B of the IV Schedule of the TNVAT Act, 2006 and hence, the appellant claimed exemption for the sale of hank yarn both under the TNVAT Act 2006 as well as under the CST Act. However, the respondent, based on the inspection of the Enforcement Wing Officials, rejected the claim of the appellant on the sales of hank yarn in respect of inter-state sales, stock transfer and outside the State sales and passed the assessment orders, on the ground that the appellant did not file their objections to the notices issued by the respondent.

3.By a common order dated 02.12.2021, the learned Judge disposed of the aforesaid writ petitions filed by the appellant /assessee, in the following terms:

> "14. However, considering the fact that the petitioner is facing huge demand of tax and penalty, this case is remitted back to the respondent to re-consider the issue subject to the petitioner depositing a 25% of the demand in the respective impugned Assessment Orders as a condition for the case to be heard. The amount shall be deposited by the petitioner within a period of three months from the date of receipt of a copy of this order.
>
> 15. Subject to the petitioner complying the above direction, the impugned Assessment Orders will stand quashed. In case the petitioner fails to remit the amount, it will be deemed that these Writ Petitions have been dismissed. In case the petitioner deposits the amount, the petitioner will also at liberty to file reply to the notices within a period of two (2) weeks from the date of payment of aforesaid 25% of the demand.

> 16. If such reply was filed by the petitioner within the time limit, the respondent shall take up the case of the petitioner and dispose the same on merits and in accordance with law within a period of three (3) months thereafter.
>
> 17. These Writ Petitions are disposed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed."

Aggrieved over the order of the learned Judge, the appellant / assessee is before this court with these intra-court appeals.

4.The learned counsel for the appellant submitted that the respondent, without providing reasonable opportunity of being heard to the appellant / assessee, has passed the assessment orders dated 31.12.2018, relating to the assessment years in question, which are arbitrary, illegal and in violation of the principles of natural justice and hence, the same are liable to be set aside. When the same was put to challenge before the writ court, the learned Judge quashed the same, however, imposed a condition to deposit 25% of the demand, for non-filing of reply by the appellant / assessee to the notices issued by the respondent, which is totally unwarranted. According to the learned counsel, when the entire assessment proceedings of the respondent was quashed, the question of pre-condition to deposit any part of the demand, does not arise. Therefore, the learned counsel sought to allow these appeals by quashing the order of the learned Judge.

5.Per contra, the learned Additional Government Pleader (Taxes) appearing for the respondent submitted that the respondent issued show cause notices dated 22.06.2018 proposing to re-assess the turnover reported by the appellant / assessee by granting 15 days time for filing their reply. However, the appellant did not file their objections. Therefore, the respondent has no other option except to pass the assessment orders on 31.12.2018, which cannot be faulted with. The learned counsel further submitted that though the appellant was granted sufficient time, they failed to utilise the same in proper manner and hence, they cannot now state that no personal hearing was provided to them before passing the assessment orders. Taking note of the same, the learned Judge rightly imposed a pre-condition of deposit of 25% on the appellant, which does not call for any interference at the hands of this court.

6.After hearing both sides and upon perusal of the documents enclosed in the typed set of papers, we concur with the order of the learned Judge in setting aside the assessment orders passed by the respondent, on the ground of violation of the principles of natural justice, as it is an admitted fact that the appellant / assessee did not file their objections to the notices issued by the respondent and they were not provided any opportunity of personal hearing.

7.At the same time, the condition of deposit of 25% imposed on the appellant / assessee, considering the facts and circumstances of the case, is unwarranted, in the opinion of this court. In similar circumstances, a co-ordinate Bench of this court in Havea Handles & Components Pvt. Ltd v. the Assistant Commissioner (CT) (FAC), Royapettah II Assessment Circle, Chennai, by judgment dated 04.07.2014 in WA Nos.867 to 869 of 2014, has set aside the condition of pre-deposit to enquire into the matter, as unsustainable and the relevant paragraph of the same is profitably extracted below:

> "6.It has to be pointed out, at this stage, that,once it has been found that the orders impugned in the writ petitions are unsustainable on account of violation of principles of natural justice, it is wholly unnecessary to impose any condition while remitting the matter for fresh adjudication and in the considered opinion of this court, the direction given to the appellant / writ petitioner to deposit 10% of the tax amount as claimed in the demand notice, as a condition precedent to enquire into the matter, is unsustainable and the said portion of the order is liable to be set aside."

8.In such view of the matter, the order of the learned Judge dated 02.12.2021 passed in the writ petitions, is modified to that extent. The appellant shall file their reply/objections to the notices dated 22.06.2018 within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter, the respondent shall consider the matter and pass orders afresh, on merits and in accordance with law, after affording due opportunity of personal hearing to the appellant, within a period of eight (8) weeks.

9.All the appeals stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

The Assistant Commissioner (ST)
Thudiyalur Assessment Circle
Coimbatore.

+1cc to Mr. N. Inbarajan, Advocate, S.R.No.35977
+1cc to the Special Government Pleader,(Taxes) S.R.No.37268

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AJS(CO)
CT/20/07/2022