BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.4239, 4242, 4246 and 4248 to 4251 of 2020
and
W.M.P.(MD) Nos.3574, 3577, 3581 to 3583 3585 and 3587 of 2020

M/S. Thanjavur Spinning Mill Limited,
represented by its Chief Executive Officer,
Vallam Road,
Thanjavur. ... Petitioner in all WPs

/vs./

The Assistant Commissioner (ST) (FAC),
Thanjavur -II Assessment Circle,
Thanjavur. ... Respondent in all WPs

Prayer in WP(MD). 4239/ 2020 :Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the second respondent in his proceedings in TIN No.33873820059/2007-08, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4242/ 2020 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2008-09, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4246/ 2020 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2011-12, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4248/ 2020 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2012-13, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4249/ 2020 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2009-10, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4250/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2013-14, quash the assessment order dated 25-12-2019 made therein.

Prayer in WP(MD). 4251/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the second respondent in his proceedings in TIN No.33873820059/2010-11, quash the assessment order dated 25-12-2019 made therein.

For Petitioner : Mr.R.L.Ramani Senior Counsel for
Mr.S.Raja Jeya Chandra Paul

For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

In these writ petitions, the petitioner has challenged the impugned assessment orders, revising the deemed assessment for the assessment year 2007-08 to 2013-14.

2.The challenge to the respective impugned orders for the assessment year 2007-2008 to 2013-2014 is primarily on the ground that these orders proceed on the assumption that there is an admission of liability by the petitioner's Chief Financial Officer (Finance and Accounts), when he gave a statement before the Enforcement Authorities on 02.02.2015.

3.The learned Senior Counsel has drawn attention to the passages from the statement, which is in vernacular. The relevant portion relating to the admission of liability is only qua non maintenance of ITC register and admission of the petitioner to pay a sum of Rs.2,000/- towards compounding fee. It is submitted that barring the aforesaid admission, there is no other admission regarding sale of waste generated from the Ring Spinning Division in the open market. It is further submitted that the petitioner has explained the details in the reply to the respective notices. However, the 2nd respondent has merely concluded that the petitioner has not given any reply to the same and therefore, the demand was liable to be confirmed in the light of the admission contained in the sworn statement of Chief Financial Officer (Finance and Accounts) dated 02.02.2015.

4.The proceeding preceding the impugned order was on account of an inspection carried out at the premises of the petitioner on 02.02.2015. It is the specific case of the petitioners that the petitioners have two units, where superior and inferior yarns are produced. It is submitted that waste generated in the superior yarn mill, namely Ring Spinning Division is used as a raw material in the Open End Division, where inferior yarn is produced.

5.It is further submitted that there was a mistake on the part of the petitioners in not maintaining proper ITC Register and that pursuant to the inspection conducted on 02.02.2015, the petitioner was imposed with compounding fee of Rs.2,000/-, which has been paid by the petitioner. It is however submitted that on merits the petitioners have given a detailed explanation explaining to the respondents that there was no suppression of turn over or clearance of wastage in the open market from the Ring Spinning Division.

6.It is submitted that in the sworn statement dated 02.02.2015 also, there is no admission of liability by the petitioners regarding other aspects, though in the impugned order, it has been stated that the petitioner has admitted to liability. It is therefore submitted that the impugned order is non-speaking order and is therefore liable to be quashed.

7.Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the impugned orders are well reasoned and require no interference. In this connection, a reference was made to the following passage from the counter:-

> *"17.Where it was evident from the order of assessment that a notice was issued to the petitioner inviting objections and the notice was received by the petitioner-dealer and even after receipt of such notice, the dealer failed to submit its objections till the date of passing of the order."*

8.The learned counsel for the official respondent further submits that there are several disputed questions of fact, which cannot be decided in this writ petition and therefore, the petitioner should be directed to approach the Appellate Authority/Deputy Commissioner by way of an appeal. He therefore submits that the writ petition is liable to be dismissed.

9.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the official respondents.

10.The dispute pertains to alleged sale of Cotton waste generated by the petitioner, which was generated in the Ring Spinning Division. It is the specific case of the petitioner that the waste generated in the Ring Spinning Division was used as a raw material along with other raw material in the Open End Division, where inferior yarn is produced.

11.*Prima facie* I do not find any discussion in the impugned order as to how the aforesaid conclusion has been made in the impugned order that the petitioner has sold the waste generated in the Ring Spinning Division. In the absence of any other document such as sale invoice or admission from a third party, who may have purchased such raw materials, such inference appears to be a mere conjecture. On the other hand, it is the specific case of the petitioner that these wastes were used captively in the Open End Division to manufacture inferior yarns and that the yarn manufactured in both the Divisions have been cleared on payment of tax. For fixing the liability, the Department has to atleast establish its case is based on the preponderance of probabilities. As it stands in the impugned order, that test appears to have not been satisfied. The statement of Chief Financial Officer (Finance and Accounts) dated 02.02.2015 has not clearly established any admission of liability qua sale of waste generated from Ring Spinning Division of the petitioner.

12.In view of the above, I am inclined to set aside the respective impugned orders and remit the case back to the respondent to pass a speaking order within a period of 90 days from the date of receipt of a copy of this order. The respective impugned orders, which stand quashed by this common order, are to be treated as a supplementary show cause notice. Liberty is given to the respondent to issue a corrigendum notice, if any, to the petitioner explaining as to why and on what basis there could have been a sale of waste yarns in the open market generated from the Ring Spinning Division. Liberty is also given to the petitioner to file a reply to such corrigendum, if any, within a period of 30 days therefrom. The respondent shall pass appropriate orders on merits and in accordance with law within a period of 30 days thereafter. The respondent shall endeavor to complete the proceeding preferably within a period of 6 months from the date of receipt of this notice. It is needless to state that before passing such orders, the petitioner shall also be heard.

13.These writ petitions stand disposed of, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST) (FAC),
Thanjavur -II Assessment Circle,
Thanjavur.

+1 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-13436[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-14351[F] dated 24/03/2022)

W.P.(MD) Nos.4239, 4242, 4246 and 4248 to 4251 of 2020
22.03.2022

srr(CO)
TR(04.04.2022) 5P 4C