IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.12555 of 1999

National Textiles Corporation Ltd.,
NIC House, 35, Sona Sundaram Mills Road,
Coimbatore – 641 009. .. Petitioner

vs

The Joint Commissioner,
Commercial Taxes III (SMR)
Office of the Special Commissioner and
Commissioner, Commercial Taxes,
Chepauk, Madras. .. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records from the files of the respondent in Ref.M2/104837/95 SMR138/96 dated 21.3.1997 and quash the same.

For Petitioner : Ms.Lakshmi Sriram

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER
(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The petitioner has challenged an order dated 21-3-97, being proceedings of the Joint Commissioner in suo motu revision under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short,'Act').

2. The issue that arose for consideration on merits before the Joint Commissioner is as to whether the petitioner is entitled to beneficial rate of 2%, equating cotton blended yarn with cotton yarn.

3. The above issue is, per se, is no longer res integra as it has been decided by a Division Bench of this Court in *Sree Arunachaleswara Mills v State of Tamil Nadu* (81 STC 137). The operative part of the decision at paragraph 12 is extracted below:-

> *"12. While deciding the issue, we have to bear the above in mind. As noticed earlier, this Court had occasion to consider whether "cotton yarn" manufactured by blending with staple fibre up to 40 per cent will still be "cotton yarn" for the purpose of section 14(ii-b) of the Central Act. This Court in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills], while confirming the order of the Tribunal in C.T.A. No. 150 of 1972, held that the "cotton yarn" manufactured by blending staple fibre up to 40 per cent will still be cotton yarn. As this Court merely affirmed the view of the Tribunal, it is necessary to point out the view taken by the Tribunal in that case. The Tribunal, in C.T.A. No. 150 of 1972, held as follows :*
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> *".......... It must also be remembered that 'blended yarn' manufactured and sold by the appellants is known in the commercial circles as cotton yarn and that the prices charged are the same for yarn manufactured wholly out of the cotton and yarn manufactured out of an admixture of cotton and staple fibre. This circumstance would also point out that the goods in question have to be treated as 'cotton yarn'. There is also a certificate issued by the Superintendent of Central Excise dated 30-11-1971 to the effect in the assessment year in question the appellants had been licensed only to manufacture 'cotton yarn' and the 'cotton yarn' manufactured by the 'blended yarn' (cotton mixed with staple fibre up to 40 per cent) as well as other varieties of 'cotton yarn' manufactured by them have been cleared as 'cotton only' as per the Central Excise Rules. Under these circumstances, we hold that the 'cotton yarn' sold by the appellants must be held to be declared goods coming under item (ii-b) of section 14 and liable to be assessed at 2 per cent under the Tamil Nadu General Sales Tax Act read with sections 14 and 15 of the Central Sales Tax Act."*
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> *The Revenue, though filed a petition for leave to*

appeal to the Supreme Court in this Court, which was dismissed, did not pursue the matter further, and therefore, the view taken by this Court has become final. Presumably on the basis of the judgment of this Court in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills] and on the representation made by the manufacturers of "cotton yarn", the Government, by their letter dated 7th May, 1982, informed the Secretary, South India Mills' Association as follows :

"...........

Sub : Tamil Nadu General Sales Tax Act, 1959 - Sales Tax on cotton yarn containing blend of staple fibre - Reopening of assessment - Representation - Reply sent.

Ref : Your representation No. 2673/81 dated 20-8-1981.

I am directed to invite attention to the reference cited and to state that the clarification issued by the erstwhile Board of Revenue in its B.P. Rt. No. 2265/79, dated 4-7-1979, holding that blended yarn was taxable at 4 per cent multi-point has been cancelled. A revised clarification has been issued by the Commissioner of Commercial Taxes in his reference D. Dis. No. 9180/80 dated 17-8-1981, to the effect that blended cotton yarn is to be assessed as cotton yarn at 3 per cent single point up to 4-12-1979 and as blended yarn (again 3 per cent single point only) from 5-12-1979 under the new entry 18A of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. Thus the question of levy of tax on blended yarn at 4 per cent multi-point prior to 5-12-1979 does not arise.

Yours faithfully,
Sd/-...........
for Commissioner & Secretary to Government."

Thereafter, the Revenue purporting to treat "blended cotton yarn" as non-declared goods, introduced entry 18A to the First Schedule of the State Act, by Tamil Nadu Act 28 of 1980. In the light of this Court's judgment in T.C. No. 47 of 1974 [Deputy Commissioner (CT) v. Kandasami Spinning Mills] holding that "cotton yarn" manufactured by blending staple fibre up to 40 per cent will still be "cotton yarn" for the purpose of section 14(ii-b) of the Central Act, it will not be open to the State Government to treat cotton yarn blended with staple fibre not exceeding 16 2/3 per cent by weight as a separate category of blended yarn and also as non-declared goods *by bringing that category under the First Schedule. Because, such a change can be made only by the Parliament by introducing appropriate amendment to section 14 of the Central Sales Tax Act."*

4. While there is no dispute on the position on merits, the question before us is as to the entitlement of the petitioner to put forth such a claim. An order of assessment had come to be passed for the period 1985 – 1986 on 31.08.1989. The petitioner had not, at the time of original assessment, made a claim in regard to beneficial rate of tax in regard to cotton blended yarn. The matter travelled in appeal on other grounds before the appellate authorities and ultimately, vide dated 04.09.1992, the Sales Tax Appellate Tribunal, Coimbatore, remanded the matter.

5. Even at that juncture, the petitioner did not make any claim in regard to beneficial rate and the matter had been remanded to the file of the assessing authority for examination on entirely different issues. It was only at the time of the remand proceedings, that the petitioner, for the first time, sought the benefit of 2% tax in the written submissions dated 3.4.95 filed before the Deputy Commissioner, Appeals.

6. We find no infirmity in the petitioner having raised this issue for the first time in remand. The decision of this Court in *Sree Arunachaleswara Mills's case* is dated 18.01.1991 and was hence unavailable to the petitioner at the time of the original proceedings culminating in order of assessment dated 31.08.1989. The discussion in *Sree Arunachaleswara Mills* makes it more than clear that there was no distinction whatsoever between cotton yarn & cotton blended yarn for the

purpose of taxability. The Department has itself clarified so, in letter dated 07.05.1992 addressed to the manufacturers of cotton yarn.

7. In fact, the position regarding taxability of cotton blended yarn had been addressed even earlier by this Court in the case of *Deputy Commissioner (CT) v. Kandasami Mills* and by a decision dated 06.03.1974 the Bench had equated both cotton yarn and cotton blended yarn (obtained by blending staple fibre upto 40%) for the purposes of taxability under the Act. The clarification of the Department dated 07.05.1982 followed thereafter.

8. Hence, the claim of the petitioner for parity of tax rate, and applicability of 2% tax on cotton blended yarn could well have been granted even earlier. The mere fact that no claim had been made would not, in our view, stand in the way of the petitioner's eligibility. It is relevant to note at this juncture that the composition of the petitioner's goods as being cotton yarn blended with staple fibre upto 40% has not been disputed at any point and even before us this position is admitted.

9. The Revenue does not dispute either the facts germane to the matter or the applicability of the ratio of *Sree Arunachaleswara Mills's* to this case. Hence, we are persuaded to hold that rejection of the claim for beneficial rate of tax, merely on the ground that the claim was raised for the first time in remand, is incorrect. To make it clear, since the petitioner is otherwise admittedly entitled to the benefit of the rate of tax at 2%, the mere fact that the claim was introduced for the first time in remand proceedings would not stand to its detriment. Impugned

proceedings dated 21.3.1997 are set aside and this writ petition is allowed. No costs.

[A.S.M., J] [G.A.M., J]
16.08.2024

Index:Yes
Neutral Citation:Yes
ssm

To

The Joint Commissioner,
Commercial Taxes III (SMR)
Office of the Special Commissioner and
Commissioner, Commercial Taxes,
Chepauk, Madras.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

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