

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.521 of 2020 and
W.M.P.(MD)No.399 of 2020

Tvl.Madura Coats (P) Ltd.,
Represented by its Director,
S.Murali.

... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2. The State Tax Officer,
Ambasamudram Assessment Circle,
No.1/22, Thilagarpuram,
Main Road, Ambasamudram,
Thirunelveli District – 627 401.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in CST No.102001, 2015-16 23.10.2019 and CST No.102001/2015-16 31.08.2019 and quash the same and consequently direct the second respondent to re-do the assessment afresh by giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.J.Padmavathi Devi,
Special Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The subject matter pertains to the assessment year 2015-16. The second respondent issued notice dated 20.09.2017 calling upon the petitioner to file statutory declaration forms and other documents as the petitioner claimed exemption on certain transactions. Thereafter, the second respondent also issued a personal hearing notice dated 06.05.2019. The petitioner appeared before the respondents and also made available certain documents. Not satisfied with the stand taken by the petitioner, the impugned order dated 31.08.2019 came to be passed and the total taxable turnover for the year 2015-16 under CST Act'56 was determined as follows:-

Total turnover determined		:	Rs.1202,39,52,635/-
Exemption Allowed		:	
Stock Transfer	: 7532110430	:	
Sales against Form H	: 7017570	:	
Export Sales u/s.5(1)	: 3970582939	:	
Local SEZ sales	: 189767355	:	
Other state SEZ Sales	: 1476287	:	
	-----	:	Rs.1170,09,54,581/-
Taxable turnover determined		:	Rs. 32,29,98,054/-

Taxable Turnover is classified as below:

Commodity	Turnover	Rate of Tax	CST Tax
Interstate sales against Form 'C'	26,06,41,875/-	2%	52,12,838
Interstate sales without Form 'C'	1,15,75,900/-	5%	5,78,795
Stock transfer without Form 'F'	18,903/-	5%	945
Export documents not submitted	5,07,61,376/-	5%	25,38,069
TOTAL	32,29,98,054/-		83,30,647

Tax due : Rs.83,30,647

Tax : Rs.57,49,475

Balance : Rs.29,86,852

The same is questioned in this writ petition.

3. Aggrieved by the same, the petitioner filed a petition under Section 84 of the Act for rectifying the mistakes

which according to the petitioner vitiated the order dated 31.08.2019. In the rectification petition, the petitioner got only partial relief and the impugned order dated 23.10.2019 came to be passed. Not satisfied with the same, the petitioner has filed this writ petition in which the earlier order dated 31.08.2019 has been questioned along with the rectification order dated 23.10.2019.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition.

5. The writ prayer is strongly opposed by the respondents who have filed the counter affidavit. The learned Special Government Pleader submitted that the orders impugned in this writ petition do not warrant any interference.

6. I carefully considered the rival contentions and went through the materials on record.

7. As rightly pointed out by the learned counsel appearing for the writ petitioner, only two aspects call for perusal. The petitioner has claimed that even though they had entered into certain sale transactions, some of them were reversed and they had erroneously shown the same in their sales return.

8. The other aspect is regarding the variation in value as set out in the export documents and what was found in their books of account. The case turns only on these two aspects.

9. The learned counsel appearing for the petitioner points out that for the subsequent years, the petitioner gave an explanation that the difference was on account of the fluctuation in the foreign exchange and that this is quite normal in the export business. The petitioner's counsel filed a typed set of papers in which the order dated 02.06.2020 passed by the second respondent herein has been enclosed. In the said order, the explanation given by the writ petitioner has been accepted by the authority in the following terms:

“We state that the Export Assessable value assessed by the customs authority is not an actual export value but its notional value, the same was relating to the prevailing market value of the foreign currency as on the date of Export. We would like to state here that the Quantity and USD value for as per our Export Invoice has been matched with the Shipping Bill and the differences were noted during the document verification process by the assessing authority.

The foreign currency valuation shall vary at every stage on below:

1. Commercial Invoice Date
2. Date of Shipping Bill.
3. Importer Payment Date.

They have stated that the Export Assessable value assessed by the customs authority is not an actual export value but the same was relating to the prevailing market value of the Foreign Currency as on the date of Export.

The dealers explanations and details

furnished in their reply were carefully examined. The dealers explanations are accepted and the quantity recorded in the shipping invoices are actually exported as per bill of lading noted in the direct export statement and there is no variation in the export quantity of finished goods between the invoices and shipping bill & bill of lading. The variation noticed in amount between the value as per reported turnover and shipping bill is due to exchange of dollars in to Indian Rupee and this variation is normal one in the exports business. Hence the explanations given by the dealers are accepted.”

10. I am of the view that the very same approach subsequently shown by the second respondent ought to have been exhibited in the instant case also.

11. The petitioner's counsel would point out that according to the second respondent, there is a difference in

the value shown in the bill of lading and in the books of account maintained by the assessee. But then, the number of export transactions made by the assessee tallies. The quantum of goods as mentioned in the documents also tallies. The dollar value as mentioned in the bill of lading and in the books of account also tallies. Therefore, the variation is obviously due to the fluctuation in the foreign exchange value.

12. But then in the impugned order, this stand of the petitioner has been rejected on the ground that the petitioner did not submit the relevant document like Bank Reconciliation Statement for the variation.

13. I cannot appreciate this reason set out in the impugned order.

14. When the assessing authorities could accept the explanation of the assessee for the subsequent years, there is no reason for them to take a different stand in the instant year. Therefore, the orders impugned in the writ petition warrant interference. As regards the aspect, namely, sales

return, it is seen that the petitioner has enclosed the certificate issued by the Chartered Accountants along with their explanation. The Chartered Accountants have certified that the transactions in question were executed by the assessee and that they had been reversed in their books of account. In other words, the transactions became unfructified sales. It appears that for proving *bona fides*, the documents regarding reversal of export sales were produced before the assessing authority. The assessing authority has rejected this stand of the petitioner by stating that the relevant documents have not been submitted.

15. I cannot appreciate this reason adduced by the assessing authority. When the petitioners deny the sales in question, they cannot do anything more. If the assessing authority is of the view that this is a false statement, the onus is on the authority. The petitioner cannot be expected to prove the negative. Therefore, on both the issues, I find in favour of the petitioner. The orders impugned in this writ petition stand set aside to that extent. The writ petition stands allowed accordingly. It is for the respondents to issue a

revised order. No costs. Consequently, connected miscellaneous petition is closed.

13.08.2020

Index : Yes / No
Internet : Yes/ No
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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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G.R.SWAMINATHAN,J.

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