IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.19945 to 19947 of 2015
And
M.P.Nos.1 to 1 of 2015

Aar Gee Engineering Works
Represented by Mr.A.Perumal, Partner
...Petitioner in W.P.19945/2015

Aar Gee Coach
Represented by Mr.A.Perumal, Partner
...Petitioner in W.P.19946/2015

Aar Gee Coach
Represented by Mr.A.Perumal, Partner
...Petitioner in W.P.19947/2015

Vs.

1 The Principal Secretary to
Government Commercial Taxes and
Registration Department Secretariat
Chennai-9

2 The Principal Secretary/
The Commissioner of Commercial Taxes
Commercial Taxes Department 2nd Floor
Ezhilagam Chepauk Chennai-5

3 The Secretary to Government
(Expenditure) Finance Department
Secretariat Chennai-9

4 The Assistant Commissioner (CT),
(Formerly Commercial Tax Officer),
Karur (West) Assessment Circle
Commercial Taxes Department Karur
...Respondents in all the W.Ps.

Common Prayer:

Writ petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the respondents 1 to 3 in

SCP No.01/2015 (Ref No.M1/4450/2013) dated 15.05.2015 dismissing the application of the petitioner filed under section 16-D of the Tamil Nadu General Sales Tax Act, 1959 and quash the same as it is against the principles of natural justice and the provisions under section 16-D of the TNGST Act, 1959 and direct the 4th respondent to make fresh assessment as per the direction of the Tamil Nadu Sales Tax Appellate Tribunal in its order in MTA Nos.714/94, 413/94 and 414/94 respectively, dated 23rd October, 1998, 20th October, 1998 and 20th October, 1998 respectively.

For Petitioners : Mr.R.Rajendran
For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader (T)

COMMON ORDER

By consent, these writ petitions are taken up for final disposal.

2.There are three writ petitions filed challenging the impugned order passed by the Special Committee under section 16-D of the Tamil Nadu General Sales Tax Act, 1959 inter alia stating that the respondents failed to see that no summons were issued by the fourth respondent to say that the petitioners application filed under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 on 09.12.2004, 03.02.2015 and 03.02.2015 respectively, were returned to the correct address of the petitioners.

3.It is the further claim of the petitioners that the respondent miserably failed to see that as required under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959, whether the proceedings of the fourth respondent is in accordance with the provisions of the Act. More particularly, when the enhancement petition was remanded back to the fourth respondent for a specific purpose to see whether the proceedings of the fourth respondent is in accordance with the provisions of the Act, the fourth respondent simply restored the original assessment order without any discussion for passing the liability under various Sections of the Act treating the transaction as worst transaction and is liable to be taxed.

4.This Court is not able to find any merits in the writ petitions for more than two reasons. Firstly, the petitioners having suffered an order on 12.02.2001 have moved application under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 on 09.12.2004, 03.02.2015 and 03.02.2015 respectively with an enormous delay. But the point that needs consideration is, as submitted by the learned Additional Government Pleader (T), even the application filed by the petitioners under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 cannot be made applicable to the case of the petitioners even if the writ petitions are taken on record on merits for the simple reason that Section 16(4) of the Act was brought into existence only with effect from 01.07.2002. Therefore, it cannot be made applicable with retrospective effect to old cases that had happened before 01.07.2002.

5.Secondly, this Court also finds merits in the objection made by the learned Additional Government Pleader contending that the petitioners taking advantage of the amendment under Section 16-D of the Act with huge delay would disclose that even the amendment made under Section 16(D) of the Act should not be applied when there is no case made out by the petitioners with regard to the violation of principles of natural justice for invocation of Section 16(4).

6.Admittedly, in the present cases, Section 16(4) was brought into the Statute Book only on 01.07.2002. It is not in dispute that the original impugned orders were passed on 12.02.2001. Therefore, the reasoning was rightly given by the Special Committee under Section 16(4) of the Tamil Nadu General Sales Tax Act, 1959 that the application is highly belated. Therefore, it cannot be taken into account although the learned counsel appearing for the petitioners submits that there is no specific time limit fixed for preferring application under Section 16(4) of the Act. There is huge delay and no sufficient cause has been shown. Therefore the writ petitions fail and the same are dismissed.

7.The writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

pri
To

1 The Principal Secretary to
Government Commercial Taxes and
Registration Department Secretariat
Chennai-9

2 The Principal Secretary/
The Commissioner of Commercial Taxes
Commercial Taxes Department 2nd Floor
Ezhilagam Chepauk Chennai-5

3 The Secretary to Government
(Expenditure) Finance Department
Secretariat Chennai-9

4 The Assistant Commissioner (CT),
(Formerly Commercial Tax Officer),
Karur (West) Assessment Circle
Commercial Taxes Department Karur

1 cc to Spl. Government Pleader.Sr.No.35288
3 cc to Mr.R.Rajendran , Advocate Sr.No.35559 to 35561

W.P.Nos.19945 to
19947 of 2015
And
M.P.Nos.1 to
1 of 2015

lrs(co)
pmk.20.8.2015