BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.(MD)Nos.3759 and 3760 of 2015

and

M.P.Nos.1 and 1 of 2015

M/s.Sri Venkateswara Enterprises,
Represented by G.Venkata Subramanian,
Partner, 108, Madurai Road,
Manapparai 621 306, Trichy District. : Petitioner in both petitions

Vs.

1.The Joint Commissioner,
Trichy Division, Trichy 620 001.

2.The Commercial Tax Officer,
Manapparai Assessment Circle [FAC],
Manapparai. : Respondents in both petitions

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari to call for the records on the files of the first respondent in R.Dis.3705 and 3706/2012/A8, dated 02.03.2015 and quash the same as being contrary to the provisions of the Tamil Nadu Sales Tax [Settlement of Arrears] Act 2010 and hence invalid and illegal.

For Petitioner : Mr.C.Venkatraman

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

COMMON ORDER

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Mr.A.Muthukaruppan, learned Additional Government Pleader, takes notice for the respondents. By consent, the Writ Petitions are taken up for disposal at the stage of admission itself.

2. These Writ Petitions have been filed challenging the orders dated 02.03.2015, revoking the Certificate of Settlement dated 21.11.2012, issued to the petitioner.

3. According to the petitioner, the petitioner availed the benefit of settlement under the Tamil Nadu Sales Tax [Settlement of Arrears] Act, 2011, [for brevity, "the Act"]. Though the petitioner filed an application under the Act, on 16.04.2012, it was received by the Joint Commissioner concerned, only on 30.04.2012 and on that day, W.A.Nos.170 to 172 of 2011, pertaining to the previous years, viz., 2002 - 2003 and 2003 - 2004, filed by the petitioner herein were pending before this Court and therefore,

after filing such an application, he gave a letter to the Registrar [Judicial] of the Principal Seat of this Court, on 18.04.2012, with a request to post the above said Writ Appeals before Court concerned for withdrawal. But, according to him, unfortunately, the letter of requisition, seeking withdrawal of the said Writ Appeals, was not placed before the Court concerned. Thereafter, taking into consideration of the eligibility, the authority concerned gave a Certificate of Settlement, on 21.11.2012. But, subsequently, the said Certificate of Settlement was sought to be withdrawn by the impugned orders, which are under challenge on two grounds:-

(i). As per Section 12(1) of the Act, it is not open to the first respondent to revoke the Certificate of Settlement, after the expiry of two years from the date of issuance of such certificate.

(ii). Under Section 10 of the Samadhan Scheme, any appeal or revision pending before any authority shall be deemed to be withdrawn on the date of making the application and hence, the impugned orders are not in accordance with law.

4. The learned Additional Government Pleader appearing for the respondents would point out that at the beginning itself, the petitioner is not even eligible, as on the date of filing of the application, the Writ Appeals filed by the petitioner were pending. Unfortunately, the Certificate of Settlement was issued and therefore, the first respondent issued a show cause notice on 07.10.2013, which is less than one year after the grant of Certificate of Settlement. Hence, taking into consideration of all the aspects, the impugned orders came to be passed by the first respondent, revoking the Certificate of Settlement, which is well within the time and in accordance with law and therefore, the petitioner has no right to question the same.

5. I have considered the above submissions and perused the records carefully.

6. On a careful reading of the impugned orders, it is very clear that the first respondent has taken into consideration of the fact that if a certificate is issued, which is not in accordance with law, or wrongly issued, the authority concerned is at liberty to cancel the same, as contemplated in Section 12(1) of the Act, which reads as follows:-

"12(1). Notwithstanding anything contained in Section 9 or Section 10, where it appears to the designated authority that an applicant has obtained the certificate under Section 8 by suppressing any material information or particulars or by furnishing any incorrect or false information or particulars, such designated authority, may, within a period of two years from the date of issue of the said certificate, for reasons to be recorded in writing and after giving the applicant a reasonable opportunity of showing cause, revoke the certificate issued under sub-section (1) of Section 8."

In view of the specific provision contained in Section 12(1) of the Act, the first ground of attack made by the learned counsel for the petitioner is rejected.

7. Now, the only defence, which has been raised by the petitioner, is that under Section 10 of the Samadhan Scheme, any appeal or revision

pending before any authority shall be deemed to be withdrawn on the date of making the application and hence, the impugned orders are not in accordance with law.

8. According to the petitioner, though the declaration form has been signed by him and sent on 16.04.2012, it was received by the Joint Commissioner on 30.04.2012 and the Certificate of Settlement itself was issued on 21.11.2012. Thereafter, the impugned orders came to be passed on 02.03.2015, which is after lapse of two years from the date of issuance of such certificate and therefore, it is barred by limitation.

9. First of all, the said argument advanced by the learned counsel for the petitioner cannot be accepted, for the reason that though the impugned orders came to be passed on 02.03.2015, the petitioner was given show cause notice on 07.10.2013, calling upon him to show cause as to why the Certificate of Settlement shall not be cancelled, on the ground that by suppressing the material fact, the petitioner has obtained Certificate of Settlement. In the said show cause notice itself, it has been clearly pointed out that in spite of specific provision contained in the Act that there should not be any case pending and in spite of an undertaking given by the petitioner to withdraw the Writ Appeals, the petitioner has not chosen to withdraw the Writ Appeals and therefore, the petitioner has suppressed the material fact and hence, the first respondent has got every right to issue show cause notice, which was issued on 07.10.2013 and thereafter, the petitioner has given explanation on 15.10.2013 and thereafter, the petitioner sought further time from the authority concerned to get necessary amendment in the Judgment passed in the Writ Appeals. In spite of repeated notices, reminders and also replies, continuously, from then onwards, the petitioner was not able to produce anything from the Court to state that the Writ Appeals have been wrongly included in the list, in spite of alleged letter dated 18.04.2012 for withdrawal. Therefore, ultimately, the objections were considered and the present impugned orders have been passed, which is well within a period of two years and thus, the question of two years limitation time, as claimed by the petitioner, does not arise, because the initiation of proceedings has commenced as early as on 07.10.2013, the date on which the show cause notice was issued. From then onwards, it was this petitioner, who was asking time to give reply/objections and therefore, it is not barred by limitation and the proceedings has commenced well within the time of two years.

10. The last ground of attack is that the pendency of Writ Appeals cannot be a bar, because Section 10 of the Act contemplates that any appeal or revision pending before any authority shall be deemed to be withdrawn on the date of making the application and hence, the impugned orders are not in accordance with law.

11. For better appreciation, it would be worthwhile to refer to Section 10 of the Act, which reads as follows:-

"Notwithstanding anything to the contrary contained in any provision in the relevant Act, any proceeding or appeal or revision for any period pending before the assessing authority or appellate authority or revisional authority, as the case may be, under the relevant Act in

respect of which a certificate is issued under Section 8, shall be deemed to have been withdrawn from the date of making of the application by the applicant under sub-section (1) of section 5. Any order passed by the assessing authority or appellate authority or revisional authority subsequent to the date of filing of application for settlement of arrears of tax, penalty or interest, resulting in claim for refund of amount paid upto the time of settlement of such arrears of tax, penalty or interest under this Act, will not be taken into consideration."
The withdrawal of the proceedings, in this Section, will denote that any proceedings or appeal pending before the authority or Tribunal concerned alone will be automatically deemed to be withdrawn, but not in respect of the Writ Appeal pending before the High Court. That is why, a specific clause has been included in Section 4 of the Act, which reads as follows:-

"Subject to the other provisions of this Act, an applicant may make an application for settlement of arrears of tax, penalty or interest in respect of which assessment has been made under the relevant Act, prior to the 1st day of April 2007, against which an appeal or revision is not pending before any Court on the date of filing application."

12. Admittedly, in this case, for two assessment years, viz., 2002 - 2003 and 2003 and 2004, cases were pending. No doubt, the petitioner has produced a letter of requisition, dated 18.04.2012, submitted to the Registrar [Judicial] of this Court, seeking permission of this Court to withdraw the Writ Appeals. But, thereafter, no steps were taken to bring the case for withdrawal. Per contra, the learned counsel for the petitioner fairly produced a copy of the Judgment dated 25.02.2013, made in W.A.Nos.781 to 781 of 2012 and batch. No doubt, it is a Common Judgment. At least, on the date of hearing, a mention should have been made for withdrawal of the Writ Appeals, which has not been done or Review Applications should have been filed, bringing to the knowledge of the Court that a letter of requisition dated 18.04.2012, had already been submitted seeking withdrawal of the Writ Appeals, which has also not been done. In fact, in the Judgment dated 25.02.2013, it has been clearly stated that the very same counsel made elaborate arguments and the Writ Appeals were dismissed on merits. Taking into consideration of all the above aspects, the first respondent passed the impugned orders, revoking the Certificate of Settlement dated 21.11.2012, which warrant no interference.

13. In the result, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1.The Joint Commissioner,
Trichy Division, Trichy 620 001.

2.The Commercial Tax Officer,
Manapparai Assessment Circle [FAC],
Manapparai.

+2cc to M/S. C.Venkatraman, Advocate in SR.No. 12790 and 12789

+1cc to Special Government Pleader in SR.No 13225.

TS/07.04.2015/5P-6C

COMMON ORDER MADE IN
W.P.(MD)Nos.3759 and 3760 of 2015

DATED - 18.03.2015