IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17631 to 17633 of 2015
and
M.P.Nos.1,1 and 1 of 2015

M/s.Nilgiri Aqua Mineral Private Limited,
represented by its Director,
204, SIDCO AIEMA Tower,
First Main Road,
Ambattur Industrial Estate,
Chennai-600 058.
... Petitioner in all writ petitions

Vs.

1. The Principal Secretary to Government,
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai-600 005.

2. The Joint Commissioner of Commercial Taxes,
   Chennai (South) Division,
   No.1, Greams Road,
   Chennai-600 006.
... Respondents in all writ petitions

These writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the second respondent in proceedings in Proc.Rc.No.14540/2010/B6, 14536/2010/B6 and 14541/2010/B6 dated 15.5.2015 for the assessment years 1996-97, 1997-98 and 1996-97 and quash the same as illegal, arbitrary and misdirected.

For Petitioner : Mr.B.Natarajan in all W.Ps.

For Respondents : Mr.Manokaran Sundaram,
Additional Government Pleader
in all W.Ps.

COMMON ORDER

Heard Mr.B.Natarajan, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondents. With the consent of either side, these writ petitions are taken up for disposal.

2. The petitioner is a private limited company and has obtained the registration certificate as small scale industrial unit from the Government of Tamil Nadu. They set up a packaged water manufacturing unit in Gudalur Taluk, Nilgiris District. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short TNVAT Act) and earlier under the provisions of the TNGST Act as well as the CST Act. The petitioner obtained an Interest Free Sales Tax Deferral facility Eligibility certificate for Rs.14.62 lakhs approved by the District Industries Centre, Ooty and ordered by the Assistant Commissioner (CT) Zone VI, vide order dated 11.7.1996. Based on the said eligibility certificate, the petitioner entered into an agreement with the Assistant Commissioner (CT), Zone VI, Chennai for availment of the IFST Deferral facility for a period of nine years from 1.3.1996 to 28.02.2005 against the sale of the petitioner company's premium product called "Pristine".

3. It is stated that due to weather conditions in the area, the operation of the petitioner's water plant was severely affected and there were landslides, etc, leading to complete stoppage of the operations. At that juncture, the Government of Tamil Nadu announced Samadhan Scheme by introducing Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010. The petitioner has availed the said benefit and submitted their application on 27.12.2010 along with remittance of tax arrears and interest thereon. The application was not disposed of, but after about four years, the impugned orders have been passed, stating that the interest payable under the scheme exceeds 10% of the total amount payable under the scheme and therefore, the petitioner's application was rejected. This order is impugned in these writ petitions.

4. The primary ground, on which the petitioner has challenged the impugned orders, is that it is in violation of the principles of natural justice and no opportunity was granted to the petitioner and unreasonably, the application was kept pending for over four years and all of a sudden, it has been rejected. It is further contended that the second respondent / designated authority did not comply with the mandatory provisions of the Act and the rules framed thereunder and

without verifying the petitioner's application and without determining the amount payable, the second respondent has passed the impugned orders. By referring to Rule 3(5) of the Rules framed under the Act, it is submitted that it is mandatory that the defects, if any, in the application must be notified to the petitioner within 10 days from the date of receipt of the application, but for more than four years, the second respondent did not take any action.

5. This court had an occasion to consider the scope of the Settlement Act and the manner in which the designated authority has to examine the application filed under the Act. At this stage, it would be useful to refer to a decision of the Madurai Bench of this Court in M/S CHERAN CEMENTS LTD., REP. BY ITS DIRECTOR P. KUMAR RAJA v. THE JOINT COMMISSIONER (CT), TRICHY DIVISION AND ANR [W.P.(MD) Nos.5638 of 2014 etc. batch dated 03.09.2014]. The operative portion of the order reads as under :

> "18. Before we consider the factual and legal aspects raised in these writ petitions, it would be necessary to examine the manner in which the Settlement Act operates. The Act provides for settlement of arrears of tax, penalty or interest pertaining to sales tax and the matter connected therewith or incidental thereto. The Act came into force on 26.09.2011. Section 2(1)(a) defines 'applicant' to mean the dealer as defined in the relevant Act. The 'relevant Act' has been defined under Section 2(1)(e) to mean the repealed Tamil Nadu General Sales Tax Act, repealed Tamil Nadu Sales Tax (Surcharge) Act and the repealed Tamil Nadu Additional Sales Tax Act as well as the Central Sales Tax Act and the Rules made or notifications issued under this enactment.
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> 19. The arrears of tax, penalty or interest has been defined in Section 2(1)(b) and it includes additional sales tax, surcharge, additional surcharge and central sales tax or penalty or interest pertaining to the assessment years upto 2006-2007 for which assessment has been made prior to 01.08.2011 under the relevant Act and pending collection on the date of filing of application under the Settlement Act.
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> 20. It is not in dispute that the first respondent is the designated authority under the provisions of the Act and appointed by the Government under Section 3. The persons, who are eligible for settlement under the Act has to fulfill the conditions under Section 4 and in this case it is not in dispute that the petitioner was entitled to avail the provisions of the Settlement

Act. The procedure for filing an application has been spelt out in Section 5 of the Act. Section 6 deals with determination of amount payable by the applicant and Section 7 deals with rate applicable in determining amount payable and they are as follows:

> "5. Application for settlement.- (1) An application for the purpose of section 4 shall be made to the designated authority by an applicant within six months from the date of commencement of this Act or by such later date as the Government may, by notification, specify, from time to time, in such form, and in such manner, as may be prescribed, with proof of payment of the amount payable at the rates specified in section 7.
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> (2) A separate application shall be made for each assessment year.
>
> (3) The applicant shall send a copy of the application made under sub-section (1) to the assessing authority, appellate authority or revisional authority under the relevant Act, before whom any proceeding or appeal or revision, as the case may be, is pending, within seven days from the date of making such application before the designated authority.
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> 6. Determination of amount payable by the applicant. - (1) The designated authority shall verify the correctness of the particulars furnished in the application made under section 5 with reference to all relevant records and determine the amount payable at the rates specified in section 7.
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> (2) The designated authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with application falls short of not more than ten per cent of the amount determined under sub-section (1).
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> (3) If the applicant has not paid ninety per cent of the amount payable under section 7 along with the application, the designated authority shall summarily reject the application.
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> (4) The amount determined under sub-section (1) shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, and, if such part is fifty paise or more, it shall be rounded off to the nearest rupee, and if such part is

less than fifty paise, it shall be ignored.
7. Rate applicable in determining amount payable. - The amount payable by the applicant and to be waived shall be determined as follows:-
(a) Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the application shall pay forty per cent of arrears of tax pending collection on the date of application along with interest calculated at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.
(b) Where it relates to arrears of tax, including any arrears of tax accrued due to non-filing of declaration forms which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay forty per cent of such arrears of tax pending collection on the date of application along with interest at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.
(c) Where it relates to arrears of tax, which was admitted as tax due as per returns filed for the year with corresponding arrears of penalty and interest, the applicant shall pay the entire arrears of tax pending collection along with interest at seven and a half per cent. per annum and on such payment, the balance of interest and the entire penalty shall be waived.
(d) Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten per cent of the penalty and twenty five per cent of interest, the balance of penalty and interest shall be waived."

21. In terms of the above provisions, the applications shall be presented within six months from the date of

commencement of the Act in the form prescribed with proof of payment of the amount payable at the rates specified in Section 7. Section 7 contains four clauses. Clause (a) deals with the cases relating to best of judgment assessment for non-production of accounts; Clause (b) deals with non-filing of declaration forms, which arise under the provisions of CST Act; Clause (c) relates to arrears of tax, which has been admitted as tax due as per the returns filed for the year with corresponding arrears of penalty and interest and Clause (d) relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the amount which the applicant has to pay under each of the clauses have been mentioned.

22. Therefore, the applicant, while submitting application under Section 5 has to calculate the amount payable as per the rates mentioned in Section 7 (a) to (d) and remit the same and file proof of payment along with application. A separate application is required to be filed for each assessment. If any application or revision is pending, then the applicant has to forward the copy of the application to the said authority in terms of Section 5(3). Therefore, at the first instance, the onus lies on the dealer/applicant to determine the payment payable under Section 7. We have noticed that under Section 7, it is a rate applicable for determining the amount payable, which at the first instance is on the dealer/applicant. In terms of Section 6(1), the designated authority is bound to verify the correctness of the particulars furnished in the application made under Section 5 with reference to all relevant records and determine the amount payable at the rate specified in Section 7.

23. Therefore, at that stage the designated authority has to verify as to whether the rates as calculated by the petitioner while submitting application under Section 7 was correct. In the event the designated authority finds any discrepancy, in terms of Section 6 (2), shall demand further amount payable in the form prescribed. However, there is an important rider in sub-section 2 to Section 6, which states that if the amount paid by the applicant along with application (in terms of Section 7) falls short of not more than 10% of the amount determined under sub-section (1),

then and then alone the question of demanding further amount under Section 6(2) would arise. If the applicant failed to fulfill the conditions under sub-section (2) of Section 6, his application stands summarily rejected in terms of sub-section (3) of Section 6. Thus, the Act being a Settlement Act to give reprieve to the dealer/applicant and bring him out of the misery has first thrown the onus on the dealer/applicant and he has a statutory duty to compute the rate applicable in accordance with Section 7 of the Act, by considering all the relevant records. If the dealer/applicant properly computes the amount and remits the same and encloses proof of such payment along with the application under Section 5, the same will be taken for verification and if the designated authority, on going through the relevant records, finds that further amount is payable and if the same fall short of not more than 10% grant relief to the dealer and if not the application stands summarily rejected. Therefore, the Act operates on strict limits as clearly defined under the Statute. The onus is not only on the dealer to carefully peruse all his records and relevant documents while determining the rate payable by him, but also on the assessing officer while verifying the application as to the correctness of the particulars furnished exercising power, under Section 6(1) by taking into consideration relevant records and then determine the amount payable at the rates specified in Section 7. It is a settled legal principle that any Settlement Act or amnesty scheme have to be strictly interpreted and there cannot be any substitution or reading down the provision and the dealer/applicant cannot seek for reliefs beyond the scope of the scheme of the Settlement Act.

24. Apart from the above referred provisions, Section 8 of the Act deals with settlement of arrears and issuance of certificate. If the authority is satisfied about the payment of amount determined under Section 6(1), by an order, settle the arrears of tax, penalty or interest and issue a certificate in such form as may be prescribed, and thereupon the applicant shall be discharged from his liability or interest. In terms of sub-section (2) to Section 8, the designated authority, for reasons, to be recorded in writing, may refuse to settle the arrears of tax, penalty or interest and such orders shall be passed after giving reasonable opportunity to the applicant to show-cause against such refusal. In terms of sub-

section (3) to Section 8, the authority notified by the Government may, at any time, within ninety days from the date of issuance of certificate under sub-section (1) of Section 8 by the designated authority, modify the certificate by rectifying any error apparent on the face of the record. Therefore, the applicant to be entitled to certificate under Section 8(1) has to first satisfy the designated authority about the payment of the amount determined under sub-section (1) to Section 6. Even if the applicant satisfies such requirements, still the designated authority has power to refuse to settle the arrears of tax, penalty or interest by recording reasons in writing after issuing show-cause notice."

6. In the light of the above decision, as the impugned orders have been passed in contravention thereof, necessarily call for interference. Accordingly, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded to the second respondent for fresh consideration in terms of the provisions of the Settlement Act, after affording an opportunity of personal hearing to the petitioner to produce the Books of Accounts and relevant records, for the purpose of verifying the correctness of the particulars furnished by the petitioner in the Application made under section 5 of the Settlement Act and the computation made by the petitioner under section 7 of the Act. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

vvk Sub Assistant Registrar

To

1. The Principal Secretary to Government,
   Commercial Taxes Department,
   Ezhilagam, Chepauk, Chennai-600 005.

2. The Joint Commissioner of Commercial Taxes,
   Chennai (South) Division,
   No.1, Greams Road, Chennai-600 006.

+1cc to the Special Government Pleader(T), S.R.No.32583

PVS(CO)
CA(29/06/2016)