IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 4.7.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19178 to 19180 of 2015

Ind Auto Ltd. (Old Name)
Fiat India Pvt. Ltd. (New Name)
New Holland Fiat India Pvt. Ltd.
(formerly known as Fiat India (P) Ltd.)
Represented by its Power of Attorney Holder
Harshad Patel 303 Central Plaza 166
CST Road Kalina
Santacruz (East) Mumbai-400098. ... petitioner in all the WP's

versus

1 The Joint Commissioner (CT)
Chennai (South) Division Greams Road
Chennai-6.

2 The Assistant Commissioner(CT)
Saligramam
Assessment Circle
Chennai. ... respondents in all the WP's

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the files of the First Respondent herein in Proc.Rc.No.14571(a)/2010/B6 (1999-2000) Proc.Rc.No.3501/2010/B6 (2000-01) and Proc.Rc.No.14571/2010/B6 (2001-2002 respectively dated 30.04.2015 and quash the same.

For petitioner ... Mr.N.Inbarajan
For respondents ... Mr.Manokaran Sundaram, A.G.P.

O R D E R

Heard Thiru.N.Inbarajan and Thiru.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents.

2. With the consent of either side, these Writ Petitions are taken up for disposal.

3. The petitioner is a registered dealer on the file of the respondents under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, and in these Writ Petitions, the petitioner has challenged the order passed by the first respondent, who is the competent authority, exercising jurisdiction under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010, hereinafter referred to as the Settlement Act.

4. The first respondent has rejected the application filed by the petitioner, vide order dated 30.4.2015, under the provisions of the

Settlement Act for the years 1998-99, 2000-01 and 2001-02. The reason assigned by the first respondent in the impugned orders is that the petitioner had filed application under the Settlement Act under three assessment years. On verification of the records, it was found that the petitioner had no arrears on the date of filing the application for the relevant years and hence, it was proposed to reject the applications. Accordingly, objections were called for from the petitioner by notice dated 26.11.2013. The petitioner submitted their objection on 27.12.2013 stating that as against the orders of assessment, the State had preferred appeal before the State Sales Tax Appellate Tribunal and the Tribunal allowed the appeal by order dated 3.5.2010, and restored the Assessing Officer's order and the order of the Tribunal has not been given effect to till 31.5.2010. Thus, by referring to Section 2(1)(b) of the Settlement Act, it is stated that demand raised up to 31.5.2010 alone will be eligible for settlement under the scheme of the Settlement Act. Further, the petitioner pointed out that while passing the revision order, there was an administrative delay and requested the respondents to entertain the application. However, by the impugned order, the first respondent has stated that in terms of Section 2(1)(b) of the Settlement Act, "Arrears of tax, Penalty and Interest" means Tax, Penalty, Interest payable by an applicant under the relevant Act as the case may be, for which assessment has been made prior to 1.6.2010 under the relevant Act and pending collection on the date of filing of application under the Act. In the case of the petitioner, no amount of arrears is pending collection on the date of application and hence application filed by the petitioner stood rejected. Thus, the first respondent exercising power vested under the Settlement Act, took a narrow approach to the matter solely on the ground that the order passed by the Sales Tax Appellate Tribunal has not been given effect to till 31.5.2010. But what has been failed to be noted by the first respondent is that the demand which was raised on the petitioner was much prior to the cut off limit stipulated under the Settlement Act under Section 2(1)(b) of the Act which says that assessment made prior to 1.4.2007 under the relevant Act and pending collection on the date of filing of application could be entertained. The failure to give effect to the order passed by the Tribunal is not within the domain of the petitioner, and that being purely an administrative delay, for that reason the application for settlement could not be rejected.

5. In fact, this Court, in the case of Karuna Steel Rolling Mills vs. Designated Authroity viz., Joint Commissioner of Commercial Taxes, Salem,]2009(21) VST 368 (Mad)], had an occasion to consider some what identical issue under the provisions of the Tamil Nadu General Sales Tax Act (Settlement of Arrears) Ordinance, 2008, which subsequently became the Settlement Act. The question that arose for consideration in the said matter was if the assessment is made prior to 1.4.2002, subsequently, the demand is to be modified as per the order after 1.4.2002 then whether such case is eligible for the scheme? The reply to the said query was given by the Principal Secretary/ Commissioner of Commercial Taxes, by clarification dated 23.1.2009, which is to the following effect :-

> "Section 2(1) of the Act specifically states that the claim is applicable for assessment made prior to April 1, 2002, under the relevant Act.

> It therefore, follows that it would apply to case wherein the original assessment had been made prior to April 1, 2002 and modification made in the original assessment subsequent to the appeal order, even though after April 1, 2002, would also come under this category".

6. After noting the above reply, the Court held that the petitioner therein was entitled to file an application under Section 4 of the Ordinance and the rejection of his application on the said ground is not sustainable. The above clarification as well as the judgment squarely applies to the facts of the instant case. Accordingly, the Writ Petitions are allowed and the impugned orders are quashed and the settlement application is restored to file of the first respondent, who shall consider the same and pass orders in accordance with law.

7. In the result, the Writ Petitions are allowed. No costs. Consequently, M.P.Nos. are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1 The Joint Commissioner (CT)
Chennai (South) Division Greams Road
Chennai-6.

2 The Assistant Commissioner(CT)
Saligramam Assessment Circle Chennai.

+1 cc to Mr.N.Inbarajan, Advocate,SR.37235

+1 cc to Spl.Govt.Pleader,SR.37811.

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