IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.23818 to 23820 of 2015 &
M.P.Nos.1 to 1; 2 to 2 & 3 to 3 of 2015

1 M/s. Sundaram Spinning Mills
Private Ltd. Rep. by its Managing Director -
J.K.S.Manickam No.310 Salem Main Road
Komarapalayam-638183 Salem District.

.. Petitioner in all W.Ps

Vs

1 The Assistant Commissioner(CT)
Sankari, Salem District.

2 The Joint Commissioner (CT)
Commercial Tax Office
38/23D Second Agraharam
Salem-636 001.

.. Respondents in all W.Ps.

Petitions filed under Article 226 of The Constitution of India praying to issue writ of certiorarified mandamus to calling for the records on the file of the 2nd Respondent in Se.Mu.Si.Pa.Va. No.174/2009/A11 dated 28.09.2012 and the consequential impugned proceedings of the 1st Respondent in Roc. 1810/92/A3 dated 24.02.2015 in so far as it relates to assessment years 1991-92, 1993-94 & 1994-95, quash the same as illegal and contrary to the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance 2008 (Ordinance 7/2008) and further direct the 2nd Respondent to consider the application dated 30.01.2009 de-novo in light of the decisions rendered by this Honourable Court in W.P.(MD) Nos.16312 of 2012 dated 01.07.2014 and W.P.(MD) No.5638 of 2014 dated 03.09.2014.

For Petitioner : Mr.S.Rajasekar
(in all W.Ps)

For Respondents : Mr.Manokaran Sundaram
(in all W.Ps) Addl.Government Pleader

C O M M O N   O R D E R

Heard Mr.S.Rajasekar, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2.The petitioner is a manufacturer of yarn and was an assessee on the files of the first respondent under the erstwhile Tamil Nadu General Sales Tax Act, 1959, subsequently, they are registered on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (TNVAT Act). The orders impugned in these Writ Petitions are orders passed by the second respondent, the designating authority under the provisions of the Tamil Nadu [Settlement of Arrears] Act, 2011(Act No. 29/2011)

3.After elaborately hearing the learned counsel for the petitioner and carefully perusing the materials placed on record, it is evidently clear that the impugned orders have been passed in gross procedural violation of the procedure contemplated under Act 29 of 2011. In fact, I had considered the scope of the proceedings under the said Act in a batch of cases before the Madurai Bench of this Court in the case of 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 dt 03.09.2014]. In the said order, the Court has considered as to how an Application filed under the Act has to be considered by the designated authority and how the amount to be quantified to enable the dealer to avail the benefit under the provisions of the Act. At this stage, it would be useful to refer to the relevant portions of the said order:

> "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.

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.

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.
> (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.
> 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.

(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).
(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.

(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."

4.Admittedly, the impugned orders have been passed in violation of the procedure contemplated under the Act, which has been set out in the order, referred supra. The procedural error goes to the root of the matter, thereby vitiating the impugned proceedings. One other factor which has to be taken note of is that the designated authority accepted the case of the petitioner for the years 1992-93, 1995-1996 and 1996-97 and entertained the Applications for settlement, that too based upon the certificate issued by the Assessing Officer, which are identical in respect of the other years as well. No reason is forthcoming as to why the designating authority took a different stand only in respect of the three years, which are subject matter of challenge in these Writ Petitions viz. for the years 1991-92, 1993-94 and 1994-95. In the light of the procedural error committed by the authority, the impugned orders call for interference.

5.Accordingly, the impugned orders are set aside and the matter is remanded back to the second respondent for fresh consideration in terms of the provisions of the Settlement Act, after affording an opportunity of personal hearing 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.

6.At this juncture, the learned counsel for the petitioner submitted that the petitioner is ready and willing to make good the deficit as may be directed by the second respondent and also ready and willing to pay interest on the deficit amount, till the date of filing of the Application i.e. on 30.01.2009 and the authority may take into consideration of the same and permit the petitionr to settle the dispute once for all.

7.The above submission is placed on record and the designated authority is directed to take into consideration of the said submissions made by the learned counsel for the petitioner. The Writ Petitions are allowed with the above observation and directions, No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1 The Assistant Commissioner(CT)
Sankari, Salem District.

2 The Joint Commissioner (CT)
Commercial Tax Office
38/23D Second Agraharam
Salem-636 001.

+3cc to M/S.R.Hemalatha, Advocate Sr.31992
+1cc to the Special Government Pleader Sr.32582, 32592

W.P.Nos.23818 to 23820 of 2015

sns[co]
srg 24/06/2016