IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2485 of 2012

Akzo Nobel Coatings India (P) Ltd.,
No.10, Muthumari Chetty Street,
Chennai - 1.
Rep. By its authorised Signatory
Mr.S.Nandakumar. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Harbour-V Assessment Circle,
Wavoo Complex, 7th floor,
N.S.C.Bose Road, Chennai - 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the respondent in notice in TNGST 0080950/2006-07, dated 30.09.2011 and quash the same.

For Petitioner : Mr.MD.Ghafoorur Rahman

For Respondent : Mr.V.Haribabu, AGP

ORDER

Heard Mr.MD.Ghafoorur Rahman, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent and with their consent, the writ petition is taken up for final disposal.

2. The petitioner is a registered dealer under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959, on the file of the respondent. Aggrieved by the order of assessment dated 29.04.2010 for the year 2006-2007, the petitioner filed an appeal under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010, before the Appellate Authority. When the appeal was pending, the respondent/Assessing Officer issued a notice to the petitioner dated 09.05.2011 stating that on further verification, it was noticed that the period of delay with regard to payment of tax was wrongly worked out as 510 days instead of 852 days and

therefore, the respondent proposed to rectify the mistake and called upon the petitioner to effect the short payment of levy of interest under Section 24(3) of the Act. The petitioner submitted a reply on 19.05.2011 pointing out that when an application is pending for settlement before the competent authority, the Assessing Officer cannot proceed with the matter. This submission was made by relying upon Section 11 of the Settlement Act. Subsequently, the case was settled and a Certificate of Settlement of Arrears dated 11.07.2011 was issued by the competent authority under the Settlement Act. However, without reference to the same, the impugned order came to be passed by the respondent confirming the earlier proposal and demanding the differential levy.

3. It is clear from the Certificate of Settlement of Arrears issued by the competent authority that the petitioner has paid the amount towards full and final settlement of the arrears as determined in the orders of the Assessing Authority for the year 2006-2007. In such circumstances, the question of re-opening the settled issue does not arise nor does the respondent state under which provisions of law such power has been vested with him. Hence, it is held that the impugned order is suffered from the vice of no jurisdiction.

4. Accordingly, for the aforesaid reasons, the impugned order is set aside and the writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rkm
To
The Assistant Commissioner (CT),
Harbour-V Assessment Circle,
Wavoo Complex, 7th floor,
N.S.C.Bose Road, Chennai - 1.

+ 1 cc to MR.Ghafoorur Rahman, Advocate SR.41866
+ 1 cc to Special Government Pleader Sr.41505

W.P.No.2485 of 2012

SV(CO)
Eu 16.8.16