

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

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

W.P.Nos.26872 & 26873 of 2016
and W.M.P.Nos.23088 and 23089 of 2016

Tvl Vantage Leathers India (P) Ltd.
Represented by its Managing Director
Thiru K.Venkatasubramanian
No.76, Gengu Road
Egmore
Chennai-600 008. ...Petitioner in both WPs.

Vs

- 1.The State of Tamil Nadu
rep. by it's Secretary to Government
Department of Commercial Taxes
Fort St. George
Beach Road
Chennai-600 009.
- 2.The Commissioner of Commercial Taxes
2nd Floor, Elilagam
Chepauk
Chennai-600 005.
- 3.The Joint Commissioner (C.T) Central
C.T.Buildings, Greams Road
Chennai-600 006.
- 4.The Deputy Commercial Tax Officer (C.T)
Back Year-1, Assessment Zone-IV
Assessment Circle, Chennai
Now as Asssistant Commissioner
Egmore Assessment Circle
Dr.Ramanathan Road
Chetupet
Chennai-31. ...Respondents in both WPs.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, seeking for Writ of Certiorarified Mandamus, to call for the records relating to orders passed by the 3rd respondent in his proceedings in SR Sl.Nos. 459/2010-2011 and 482/2010-2011, dated 28.06.2016 and 30.06.2016 respectively received by the petitioner on 02.07.2016 and quash the same and to direct the 3rd respondent to afford an opportunity of personal hearing and pass fresh orders after

giving effect to the orders of the Appellate Authority i.e., the Appellate Assistant Commissioner (C.T)-II, Chennai, as ordered in AP 17/2001, dated 20.08.2002 and AP 147/2002, 03.10.2002 respectively, by the 4th respondent.

For Petitioners: Mr.M.MD.Ibrahim Ali
in both WPs.

For Respondents : Mr.S.Kanmani Annamalai
in both WPs. Additional Government Pleader

C O M M O N O R D E R

Heard Mr.M.MD.Ibrahim Ali, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice 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. Since the issue involved in both Writ Petitions are identical, Writ Petitions are disposed of by a common order.

3. The petitioner is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). The assessment for the years 1997-1998 and 1991-1992 were completed by orders of assessment, dated 16.10.2000 and 31.10.2000. Aggrieved by the same, the petitioner preferred Appeals before the Appellate Assistant Commissioner (C.T)-II, Chennai. The appeals were allowed in part. Thereafter, the Government of Tamil Nadu by G.O.Ms.No.78 Commercial Taxes and Registration Department, dated 01.06.2010, brought about a scheme for settlement of the arrears of sales tax and enacted the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 (hereinafter referred to as "Settlement Act"). The petitioner filed applications under the Settlement Act, dated 30.12.2010. The applications filed by the petitioner were put in cold storage by the competent authority under the Settlement Act, viz., the 3rd respondent and after about five years show cause notices were issued to the petitioner for the assessment years 1997-1998 and 1991-1992, dated 19.12.2015 and 11.01.2016 stating that the petitioner has not paid 90% of the amount payable under Section 7 of the Act along with the applications and proposed to reject the applications under Section 6(3) of the Settlement Act. The petitioner submitted detailed objections, dated 10.02.2016, stating that the tax arrears mentioned in the applications was based upon the orders passed by the Appellate Assistant Commissioner (C.T)-II, Chennai, vide orders dated 20.08.2002 and 03.12.2002. The petitioner along with the objections also enclosed the original assessment orders, the orders of the Appellate Assistant Commissioner (C.T)-II and the petitioner stated that revised assessment orders of the Assessing Officer have not been

received by them and the Assessing Officer ought to have given effect to the orders of the Appellate Assistant Commissioner (C.T)-II and passed revised assessment orders and the Assessing Officer having not done so, the petitioner cannot be blamed. The 3rd respondent after about six months from the date of receipt of the objections filed by the petitioner has rejected the applications by the impugned orders on the ground that the arrears has been disposed of by the Appellate Forum and not pending for collection when the Scheme came into force.

4. After hearing the learned counsel appearing on either side and perusing the materials placed on record, at the very outset it has to be stated that the impugned orders have been passed on account of total non-application of mind and without appreciating the scope and object of the Settlement Act. In fact, I had an occasion to consider a batch of Writ Petitions filed before the Madurai Bench of this Court in W.P. (MD) Nos. 5638 to 8415 of 2014 etc. batch, wherein, among other issues, the issue as to whether the applications under the Settlement Act could be rejected on the grounds as stated in the impugned orders was also considered. In fact, in the said order, this Court after taking note of the provisions of the Act elaborated upon the procedure to be adopted by the designated authority under the Act while examining an application under the Settlement Act.

5. At this stage, it will be useful to refer to the operative portion of the order in W.P.(MD) Nos. 5638 to 8415 of 2014 etc. batch, dated 03.09.2014, wherein this Court in paragraph Nos. 21 to 24 has held as follows:-

"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. With regard to the issue as to how the applications have to be dealt with when appeals are pending, it was held in paragraph No.33 as follows:-

"33. Regarding the other category of cases, the authority rejected the applications filed under Section 5 also on the ground that the

special committee exercising power under Section 16(D) of the Act has set aside the best of judgment assessment orders and remanded the matter to the assessing officer and there is no order of assessment in force and therefore the question of settlement does not arise. As far as these category of cases are concerned, it is relevant to note that this Court in the case of Anitha Plastics (cited supra) held that the petitioner could not be deprived of the benefit merely because the order was passed after remand. As a matter of fact, the fresh order passed after remand, should be taken to have been passed, only because of the appellate authority finding fault with the original order. In such circumstances, the benefit of the scheme could not be denied to the petitioner and the said decision has also been followed in the case of M/s.S.P.S.Jayam & Co., rep.by it's proprietor Mr.S.P.S.Selvaraj v. The Principal Secretary/Commissioner of Commercial Taxes and another, in W.P.(MD) No.8706 of 2009, dated 25.11.2009. Therefore, the rejection of the applications filed by the petitioners on the said ground is also not tenable. Even in these category of cases, the point raised in the first category of cases also arises and those orders also suffer from same procedural irregularity and the impugned orders in these category of cases also are required to be set aside."

7. Applying the above decision to the facts of the present case would lead to the only conclusion to hold that the impugned orders are unsustainable in law. As submitted by the learned counsel for the petitioner in the objections to the show cause notices, dated 10.02.2016, the Appellate Authority viz., the Appellate Assistant Commissioner (C.T)-II, Chennai, had allowed the appeals in part, thereby, the assessment for the relevant years 1997-1998 and 1991-1992 should be revised and there was a statutory duty on the part of the Assessing Officer to pass the revised assessment orders and for reasons best known, the Assessing Officer has not done so, therefore, the dealer cannot be blamed for the inaction on the part of the Assessing Officer, therefore, the designated authority under the Settlement Act should call for entire files or in the alternative direct the Assessing Officer to pass revised assessment orders in terms of the orders passed by the Appellate Authority viz., the Appellate Assistant Commissioner (C.T)-II, Chennai, on 20.08.2002 and 03.12.2002 and thereafter, examine the applications filed by the petitioner, on merits and in accordance with law.

8. In the light of the above, these Writ Petitions are allowed and the impugned orders, dated 28.06.2016 and

30.06.2016, are quashed and the matters are remanded to the 3rd respondent to take note of the legal position as pointed above and proceed as indicated in the preceding paragraphs within a reasonable time. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Secretary to Government
The State of Tamil Nadu
Department of Commercial Taxes
Fort St.George
Beach Road, Chennai-600 009.
- 2.The Commissioner of Commercial Taxes
2nd Floor, Elilagam, Chepauk
Chennai-600 005.
- 3.The Joint Commissioner (C.T) Central
C.T.Buildings, Greams Road, Chennai-600 006.
- 4.The Deputy Commercial Tax Officer (C.T)
Back Year-1, Assessment Zone-IV
Assessment Circle, Chennai
Now as Assistant Commissioner
Egmore Assessment Circle
Dr.Ramanathan Road, Chetupet, Chennai-31.
- 5.The Assistant Commissioner (C.T)-II, Chennai.

1 cc to Special Government Pleader, (Taxes), sr.43863

2 ccs to Mr.M.Md.Ibrahim, Advocate, sr.43722

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