IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22860 of 2004

M/s.Nadeem Leatherware Exports
No.10/23, Covelong Muthu Gramini Street
Periamet
Chennai - 600 003 ... Petitioner

Vs.

1. The Commercial Tax Officer
Periamet Assessment Circle
No.3, Ritherdon Avenue
Ritherdon Road
Chennai - 600 007

2. The Joint Commissioner (CT)
Chennai (Central) Division
Greams Road
Chennai - 600 006 ... Respondents

(Second respondent is suo motu impleaded by order of this Court on 06.09.2016)

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent in TNGST No.0421246/2002-03 and quash the impugned recovery notice dated 05.08.2004.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. In this writ petition, the petitioner has challenged a notice of demand demanding arrears of sales tax for the Assessment year 2002-03 under the provisions of the Tamil Nadu General Sales Tax Act (TNGST Act). Earlier the petitioner had filed a writ petition in W.P.No.20382 of 2004 challenging the order of assessment dated 21.05.2004. During the pendency of the present petition as well as W.P.No.20382 of 2004, the petitioner thought fit to avail the remedy provided for under the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 as the petitioner had paid the entire tax. Accordingly, an application was filed on 28.08.2010. The Joint Commissioner (CT) (FAC), Chennai (Central) Division, who is the designated authority under the provisions of the Act issued a show-cause notice dated 25.08.2011 calling upon the petitioner to state as to why their application should not be rejected because writ petition was pending. The petitioner had sent a reply on 05.09.2011 stating that they had applied for withdrawal of writ petition and the same was dismissed as withdrawn on 07.09.2011. However, curiously enough, the Joint Commissioner (Central Division), by order dated 18.12.2012 i.e., after one year after the writ petition was withdrawn, rejected the application filed by the petitioner dated 28.08.2010 under the Settlement Act. Though in this writ petition, the petitioner has not specifically challenged the said order, this Court is inclined to examine the correctness of the said order in this writ petition as the said order has been passed during the pendency of the writ petition .

3. In order to give a effective adjudication, the Joint Commissioner (CT), Chennai (Central) Division, Greams Road, Chennai - 600 006 is suo motu impleaded as the second respondent.

4. Admittedly, on the date when the petitioner filed application under the Settlement Act on 28.08.2010, W.P.No.20382 of 2004 challenging the Assessment Order and the writ petition challenging the recovery notice was pending before this Court. Thus, when a show-cause notice was issued by the second respondent dated 25.08.2011 pointing out that because of the pendency of the writ petition (W.P.No.20382 of 2004), the application for settlement is liable to be rejected, the petitioner on legal advice, withdrew the said writ petition and the same was dismissed as withdrawn on 07.09.2011. Much after the withdrawal i.e., after one year, the order dated 18.12.2012 has been passed by the second respondent rejecting the application for settlement.

5. In the light of the facts and circumstances of the case, once the petitioner has withdrawn the earlier writ petition, the

bar which is stated by the second respondent to entertain an application for settlement cannot be sustained. Since the petitioner has already paid the entire tax and this Court restores the settlement application on the file of the second respondent, the impugned order rejecting the application filed by the petitioner is set aside and the matter is remitted back to the second respondent for fresh consideration, who shall restore the petitioner's application dated 28.08.2010 for settlement and proceed in terms of the Settlement Act, 2010.

The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Commercial Tax Officer
   Periamet Assessment Circle
   No.3, Ritherdon Avenue
   Ritherdon Road
   Chennai - 600 007

2. The Joint Commissioner (CT)
   Chennai (Central) Division
   Greams Road
   Chennai - 600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.50664
+1cc to the Special Government Pleader(T), S.R.No.50637

W.P.No.22860 of 2004

VD(CO)
CA(05/10/2016)