IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM:

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

Writ Petition No.22929 of 2004
& W.P.M.P.No.27738 of 2004

Godrej Consumer Products Ltd.,
102 Chamiers Road,
Chennai - 60 028 ... Petitioner

Versus

1. The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Chennai - 600 028

2. The Deputy Commissioner (CT),
Chennai (Central) Division,
Chennai - 600 006 ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent herein in his TNGST No.1561471/01-02, dated 07.03.2004 and to quash the same.

For Petitioner : Mr. N.Inbarajan

For Respondents : Mr. K.Venkatesh,
Government Advocate (Taxes)

O R D E R

Heard Mr.N.Inbarajan, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes) for respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. In this writ petition, the petitioner challenges the proceedings, dated 07.03.2004, which is an intimation to the petitioner to pay penalty under Section 24 (3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter will be referred to as “the Act”).

3. On earlier occasions, elaborate submissions were made by the learned counsel for the petitioner stating that penalty was not leviable. The case was adjourned to enable the

learned Government Advocate (Taxes) to get necessary instructions.

4. The learned Government Advocate (Taxes) has produced the written instructions given by the first respondent, from which, it is seen that, as against the impugned proceedings, the petitioner had filed a Revision Petition before the second respondent in R.P.No.23 of 2004 and the Revision Petition was rejected on 30.06.2004, confirming the levy of penalty. It appears that there has been a remand order to levy penalty of 660 days at Rs.8,43,253/-. The first respondent would further admit that the revision has not been given effect to till date.

5. As rightly pointed out by the learned Government Advocate (Taxes), the petitioner, if aggrieved by the order passed by the second respondent in R.P.No.23 of 2004, dated 30.06.204, should have preferred a Revision Petition before the Joint Commissioner under Section 35 of the TNGST Act. The petitioner, having chosen to avail the remedies available under the Act, should definitely pursue those remedies and should not by-pass the same. In the instant case, there is no justifiable reason to by-pass the same, even though the writ petition is pending since 2004. That apart, though the copy of the order passed in the Revision Petition is filed in the typed set of papers, that is not impugned in this writ petition.

6. Hence, for the above reasons, the prayer sought for, in this writ petition, cannot be granted. However, liberty is granted to the petitioner to approach the concerned Joint Commissioner under Section 35 of the TNGST Act and if the same is done, the said Authority shall consider all the points and take a decision on the merits of the matter. If the petitioner files the Revision Petition within a period of thirty days from the date of receipt of a copy of this order, the Revision Petition shall be entertained without reference to the period of limitation and the matter shall be decided on merits. This direction is issued taking note of the two factors, namely, the pendency of the writ petition before this Court as well as the fact that the order passed by the Revisional Authority in R.P.No.23 of 2004 has not been given effect to.

7. In the result, this writ petition is dismissed. No costs. Consequently, the connected WPMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Commercial Tax Officer,
   T.Nagar (East) Assessment Circle,
   Chennai - 600 028

2. The Deputy Commissioner (CT),
   Chennai (Central) Division,
   Chennai - 600 006

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.55814
+1cc to the Special Government Pleader(T), S.R.No.56076

W.P.No.22929 of 2004
&
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LRS(CO)
CA(22/10/2016)