

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.5546 of 2017

M/s.NEPC Textiles Limited,
Rep. By its Director,
S.F.No.256, Trichy Road,
Kannamapalayam Post,
Coimbatore - 641402.

... Petitioner

Vs.

1.The Joint Commissioner of
Commercial Taxes,
Coimbatore.

2.The Commercial Tax Officer,
Palladam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus, calling for the order of the first respondent in R.P.No.121/2016/B.1 dated 16.12.2016 and consequential order of the 2nd respondent dated 05.01.2017 in TNGST No.6241271/1997-1998 to 2007-2008 and quash the same and direct the first respondent to dispose the revision application of the petitioner filed against the order of the 2nd respondent dated 16.06.2016 on merits.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 16.12.2016, summarily rejecting the revision filed by the petitioner on the ground that the petitioner has not deposited 25% of the disputed claim, even though sufficient time was granted to the petitioner for making such payment.

2. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The petitioner is a company manufacturing cotton yarn. The petitioner has entered into an agreement with the Assistant Commissioner (Commercial Tax), Tirupur, called as Deed of Agreement for Demand Payment of Deferred Sales Tax, Deemed, Reloaning and Recovery of Loan, dated 14.07.1997. It is stated that the petitioner, in terms of the above agreement, is entitled to Interest Free Sales Tax benefits for a period of seven years from 01.04.1997 with a repayment obligation to operate between 01.04.2006 and 01.04.2012.

4. It is further stated that though the petitioner was able to make repayments of the Interest Free Sales Tax benefits (IFST) from 01.04.2004 to 31.03.2006, due to certain financial difficulties, they were unable to meet its repayment obligation thereafter in time. Therefore for the alleged omission to repay the IFST within the stipulated time, the petitioner was directed to pay interest of Rs.4,22,33,296/- by the Commercial Tax Officer, Palladam, for such belated payment of IFST.

5. Challenging such order, the petitioner preferred a Revision before the first respondent under Section 54 of the Tamil Nadu Value Added Tax Act, 2006. The said Revision was rejected by the first respondent on the reason that the petitioner has not paid 25% of the disputed claim as ordered by the first respondent on 16.12.2016.

6. The learned Counsel for the petitioner submitted that the direction issued by the first respondent to pay 25% of the disputed claim, even for entertaining the Revision is not valid and not in accordance with the procedure contemplated under Section 54 of the Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as "the Act"). He further submitted that, at the best, the first respondent can impose some conditions, only when hearing the stay petition and not to insist such compliance, even to entertain the Revision Petition.

7. The learned Additional Government Pleader submitted that the first respondent is having power to impose conditions under Section 54(4) of the Act and therefore, the petitioner can not have any grievance.

8. The points for consideration in this matter is as to whether the first respondent is justified in imposing the payment of 25% of the disputed amount as a precondition for entertaining revision itself. In order to answer such question, it is better to read Section 54 of the Act, dealing with the power of revision by the Joint Commissioner, which is extracted hereunder:

"54.Powers of revision of Joint Commissioner:-

(1) Any person objecting to an order passed or

proceeding recorded under this Act for which an appeal has not been provided for in Section 51 or Section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner prescribed file an application for revision of such order or proceeding to the Joint Commissioner.

Provided that the Deputy Commissioner may within a further period of thirty days admit an application for revision presented after the expiration of the first mentioned period of thirty days, if he is satisfied that the applicant had sufficient cause for not presenting the application within the first mentioned period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under Sub Section (1) the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Joint Commissioner may in his discretion give such directions as he thinks fit, in regard to the payment of such tax, fee or other amount before the disposal of revision, if the applicant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard."

9. Perusal of the said provision would make it clear that such revision has to be filed within 30 days from the date on which a copy of the order or proceedings was served on the assessee/any person and that the Revisional Authority can entertain such revision even after such time, however within a further period of 30 days only, provided, if he is satisfied that the Revision Petitioner has sufficient cause for not

presenting the application within the first 30 days.

10. Further perusal of Sub Sections 2 and 3 of Section 54 of the Act would indicate that after verification of the application/revision, as to whether it is in the prescribed manner, the same shall be admitted and the records will be called for examination and thereafter, the revisional authority may make such enquiry and pass order on such revision thereafter. No doubt Sub Section 4 contemplates that the tax, fee or other amount disputed in such revision shall be paid in accordance with the order against which the revision has been filed, provided the Revisional Authority in his discretion if thinks fit, may issue some directions with regard to the payment of such tax, fee or other amount before disposal of revision, if the applicant furnishes sufficient security to the satisfaction of such Revisional Authority. A careful perusal of Sub Section 4 would thus indicate that occasion for exercise of such power would arise only when a plea for interim stay of the order challenged in revision is sought for and certainly not at the threshold of entertaining and admitting the revision itself. In other words, it goes without saying that the revision petitioner, in the absence of any interim order of stay of the original authority, is duty bound to pay the disputed tax and other liability, as it is well settled that mere filing or pendency of an appeal or revision will not operate as stay of further proceedings automatically. Thus it is evident that the intention of the legislation of Section 54(4) is not for exercising such power at the threshold or entertaining the revision but at the time of considering the interim relief, pending revision.

11. Therefore, as rightly pointed out by the learned Counsel for the petitioner, only when the stay application is taken up for hearing and disposal, the Revisional Authority can pass order imposing certain conditions. On the other hand in this case, the first respondent herein has rejected the very revision petition itself on the ground that the petitioner has not deposited 25% of the amount. Admittedly, the stay petition filed by the petitioner is still pending and no order has been passed in that application. Therefore, considering all these aspects, I am of the view that the order passed by the first respondent rejecting the revision can not be sustained.

12. Accordingly, this writ petition is allowed and the impugned order is set aside. The revision filed before the first respondent stands restored. The first respondent is directed to take the stay application filed by the petitioner and dispose of the same on merits and in accordance with law. It is open to the petitioner to canvass all the points raised in this writ petition before the Revisional Authority. Such exercise shall

be done by the Revisional authority viz., the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsm

To

1.The Joint Commissioner of
Commercial Taxes,
Coimbatore.

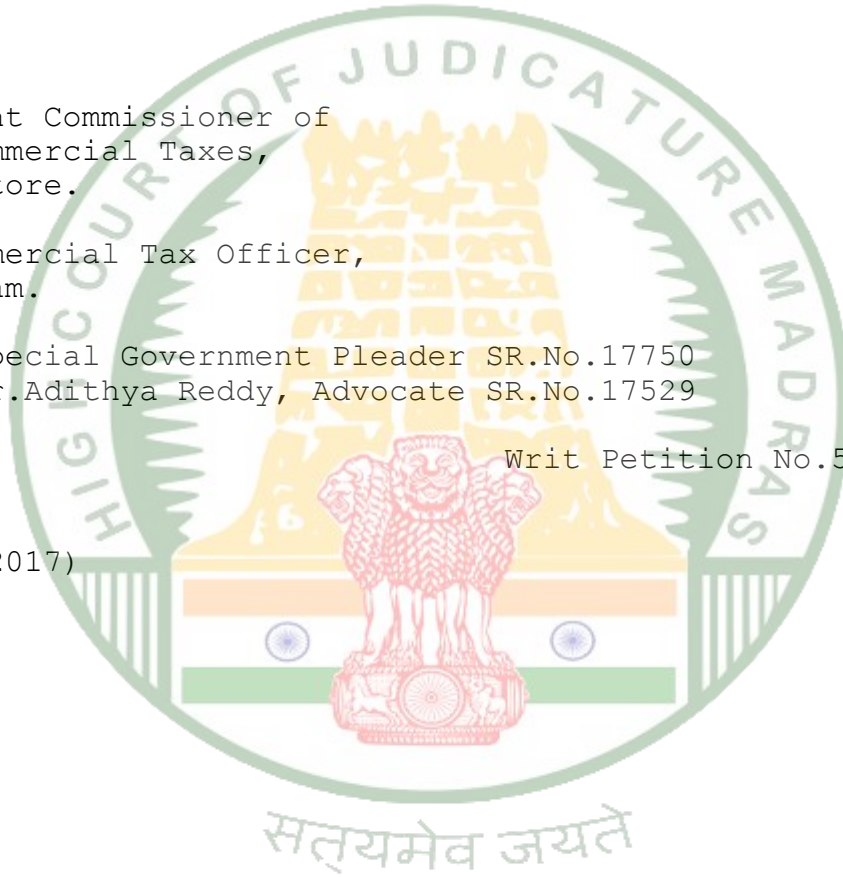
2.The Commercial Tax Officer,
Palladam.

+1cc to Special Government Pleader SR.No.17750

+1cc to Mr.Adithya Reddy, Advocate SR.No.17529

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SKV(CO)
GN(04/04/2017)



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