

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.11033 and 11034 of 2017
and
W.M.P.Nos.11985 to 11988 of 2017

Jyothy Laboratories Limited,
(Successors to Henkel India Ltd.,)
Represented by its Zonal Commercial Manager,
N-903 (Rear Wing), Manipal Centre,
Dickenson Road,
Bangalore - 560 042. ... Petitioner in both W.Ps

vs

1. The Assistant Commissioner (CT)
Nandanam Assessment Circle,
46, Greenways Road,
Chennai - 600 028.
2. The Assistant Commissioner (CT)
Kodungaiyur Assessment Circle,
5/79, Kaviarasu Kannadasan Nagar,
Kodungaiyur (Near Kodungaiyur Police Station)
3. The Chief Manager,
The Federal Bank Ltd.,
A-8, Laram Centre, Andheri (West)
Mumbai - 400 058. Respondent in both W.Ps

Prayer in W.P.No.11033 of 2017:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, calling for the records on the files of the first Respondent herein in TNGST: 1580780/2005 - 2006, dated 07.04.2016, quashing the same.

Prayer in W.P.No.11034 of 2017:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, calling for the

records on the files of the first Respondent herein in TNGST: 1580780/2017/A3, dated 27.03.2017 along with Form U, being notice of recovery, quashing the same.

For Petitioner in both W.Ps : Mr.N.Prasad

For Respondent in both W.Ps : Mr.K.Venkatesh
R1 & R2 Government Advocate

C O M M O N O R D E R

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side, these writ petitions itself are taken up for disposal.

2.The petitioner is Jyothy Laboratories India Limited, who are Successors of M/s.Henkel India Limited. They have filed these Writ Petitions challenging the assessment order dated 07.04.2016 under the TNGST Act for the year 2005 - 2006 and a consequential recovery notice dated 27.03.2017.

3.The case, as projected by the petitioner, lies in a very narrow campus, that is to say that the impugned proceedings have been issued without notice to the petitioner and the petitioner's Bank account sought to be attached without providing an opportunity to contest the demand.

4. The petitioner is a Public Limited Company engaged in the manufacture and sale of soaps and detergents and an assessee on the file of the Second Respondent. The brands sold by the petitioner include Ujala, Mr.White, Henko Stain Champion etc. M/s.Henkel Spic India Limited is a Public Limited Company, which was marketing brands like Margo, Brisk, Chek, Fa etc., and they were registered as a dealer on the file of the first respondent.

5. On account of a scheme of arrangement dated 09.05.2005, M/s.Henkel Spic India Limited was amalgamated with another Company, namely, Henkel India Limited and this amalgamation was sanctioned by this Court in Company Petition Nos.64 and 65 of 2005 and the amalgamation came into effect from 01.07.2004 and thereupon, on and from that said date, there was no company in the name and style of "Henkel Spic India Limited"

and the only company, which was existing in the eye of law, was the company by name "Henkel India Limited". With effect from 05.05.2011, the shares of Henkel India Limited were acquired by the petitioner's company and the company was re-named as "Jyothy Consumer Products Limited" and thereafter, there was an amalgamation of Jyothy Consumer Products Limited with the petitioner's company, namely, Jyothy Laboratories Limited, which was sanctioned by the High Court of Bombay in Company Scheme Petition No.27 of 2013, dated 12.04.2013, and the said order came into effect from 01.04.2012.

6. Thus, it is the petitioner's contention that there is no any longer a Company under the name and style of "Jyothy Consumer Products Limited" and the petitioner has stepped into the shoes of the said Company and the change of name has been intimated to the Commercial Taxes Department. The petitioner, in the application for registration filed before the Second Respondent, indicated their address at 43A, TH Road, Kaviarasu Kannadasan Nagar, Chennai - 600 118 and also furnished the contact number of one Mr.Sukumar, who is working from the said place of business. The depot of the petitioner was also the depot of the erstwhile Henkel India Limited and the depot of Jyothy Consumer Products Limited and was stated to be only an additional place of business. While so, the petitioner at Mumbai Office received the impugned recovery notice which is challenged before this Court.

7. Though other grounds have been raised in the affidavit filed in support of the writ petition, learned counsel for the petitioner confined his argument to only one contention, namely, that without notice to the petitioner, the impugned orders have been passed.

8. The change of name shown to have been intimated to the Second Respondent by Letter dated 19.04.2017 was acknowledged in the letter delivery book. The respondent cannot now take a different stand and state that no such communication was received by him, because, the respondent Department has not abandoned the practice of giving acknowledgment in Letter delivery book, though this Court has deprecated such practice in several orders.

9. Thus, this Court is inclined to accept the stand taken by the petitioner, by which, the petitioner on 19.04.2017 informed the Second Respondent about the change in management and how the petitioner alone is now in existence and the earlier registration number of other companies have since been

cancelled. Thus, this Court is convinced that the petitioner should be granted an opportunity to put-forth the contention.

10. Accordingly, the Writ Petitions are disposed of by directing the petitioner to treat the impugned assessment order dated 07.04.2016 as a show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order, after which, the first respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. Till final orders are passed, the recovery notice dated 27.03.2017 shall be kept in abeyance. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

rna
To

1. The Assistant Commissioner (CT)
Nandanam Assessment Circle,
46, Greenways Road,
Chennai - 600 028.
2. The Assistant Commissioner (CT)
Kodungaiyur Assessment Circle,
5/79, Kaviarasu Kannadasan Nagar,
Kodungaiyur (Near Kodungaiyur Police Station)

+1 CC to Ms.N. Inbarajan, Advocate sr 52586.
+1 CC to The Spl. Govt. Pleader sr 52642.

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MV(CO)
sp(21/08/2017)