

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

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

W.P.NO.25961 OF 2017

AND

W.M.P.No.27539 of 2017

M/s.Computer Graphics Limited.

Rep.by its Managing Director J.P.Acharya

.... Petitioner

Vs.

1. The Joint Commissioner (CT)
Chennai (East) Division,
PAPJM Building, III Floor
Greams Road, Chennai-6 .

2. The Commercial Tax Officer,
Mylapore Assessment Circle,
46, Greenways Road,
Chennai 600 028.

.... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceeding in Pro.RC.8527/2010/A11, dated 03.11.2014 and to quash the same as illegal and direct the first respondent to accept the Form I application, dated 01.12.2010 filed by the petitioner for settlement of arrears of tax and to issue the certificate in accordance with law.

For Petitioner : Mr. S. Ramanathan

For Respondents : Mr. K. Venkatesh
Government Advocate

ORDER

Heard Mr. S. Ramanathan, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondents. With consent of learned counsel appearing on either side, the Writ Petition is taken up for disposal.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, by which, the application filed by the petitioner under the provisions of Tamil Nadu Sales Tax Settlement of Arrears Act 2010, (i.e., Act by which, a Samadhan Scheme providing for settlement of arrears of tax, penalty or interest was brought in by the Government) was rejected.

3. The impugned order is dated 03.11.2014. The reasons set out by the petitioner for approaching this Court, challenging the said order at this juncture, is on account of the fact that, such order was not intimated to the petitioner, and only when the petitioner received a notice from the second respondent, dated 18.09.2017, demanding tax, interest and penalty for the year 1992-1993 under TNGST Act, they came to know that their application filed under Samadhan Scheme has been rejected. Thereafter, the petitioner approached the first respondent, and gave a letter, stating that, they have not been communicated with the impugned order; on direction issued, they filed application for issuance of the certified copy of the impugned order; and after obtaining the same, challenged the said order by way of this Writ Petition. One more reason assigned by the petitioner is that, in respect of the petitioner's Sister Concern, viz., M/s.Nippon Enterprises (South), similar order was passed by the first respondent, rejecting the application for settlement, assigning very same reason. Challenging the said orders, the said Sister Concern filed W.P.Nos.24198 & 24199 of 2014, and the Writ Petitions were allowed by this Court, by order, dated 30.04.2015. Therefore, it is submitted that, had the petitioner been communicated the impugned order, they would have simultaneously filed another Writ Petition, in the name of the petitioner challenging the same.

4. In the light of the facts, this Court is inclined to accept the stand taken by the petitioner, and not rejecting the Writ Petition on the ground of delay and laches, more so when, the issue is squarely covered by the decision of the Nippon Enterprises (South) Vs. The Joint Commissioner (CT)

Chennai and another) in W.P.Nos.24198 & 24199 of 2014, dated 30.04.2015.

5. The learned Government Advocate appearing for the respondents does not dispute the legal position.

6. The correctness of the impugned order, in the case of Nippon Enterprises (supra) was decided by the Court, and after taking note of the decision in the case of (Cheran Cements Ltd., Vs. Joint Commissioner (CT) Trichy Division and another) reported in W.P.(MD) Nos5638 of 2014 etc., batch dated 03.09.2012, allowed the Writ Petitions assigning specific reasons. At this juncture, it would be beneficial to refer to the relevant paragraph of the order passed in Nippon Enterprises' case (supra), which is as follows:-

"8. This Court in the case of Cheran Cements Limited versus Joint Commissioner (CT), Trichy Division and another in W.P.(MD) Nos.5638 of 2014 etc., batch dated 3.9.2012 has elaborately considered the scope of the Samadhan Act and as to how the Scheme of the Act operates and at this stage, it will be useful to refer to the relevant portions of the order in the writ petitions, as follows:-

'18.....The Act provides for settlement of arrears of tax, penalty or interest pertaining to sales tax and the matter connected therewith or incidental thereto. The Act came into force on 26.09.2011. Section 2(1)(a) defines 'applicant' to mean the dealer as defined in the relevant Act. The 'relevant Act' has been defined under Section 2(1)(e) to mean the repealed Tamil Nadu General Sales Tax Act, repealed Tamil Nadu Sales Tax (Surcharge) Act and the repealed Tamil Nadu Additional Sales Tax Act as well as the Central Sales Tax Act and the Rules made or notifications issued under this enactment.

19. The arrears of tax, penalty or interest has been defined in Section2(1)(b) and it includes additional sales tax, surcharge,

additional surcharge and central sales tax or penalty or interest pertaining to the assessment years upto 2006-2007 for which assessment has been made prior to 01.08.2011 under the relevant Act and pending collection on the date of filing of application under the Settlement Act.

20. It is not in dispute that the first respondent is the designated authority under the provisions of the Act and appointed by the Government under Section 3. The persons, who are eligible for settlement under the Act has to fulfill the conditions under Section 4 and in this case it is not in dispute that the petitioner was entitled to avail the provisions of the Settlement Act. The procedure for filing an application has been spelt out in Section 5 of the Act. Section 6 deals with determination of amount payable by the applicant and Section 7 deals with rate applicable in determining amount payable and they are as follows:

'5. Application for settlement.-

(1) An application for the purpose of section 4 shall be made to the designated authority by an applicant within six months from the date of commencement of this Act or by such later date as the Government may, by notification, specify, from time to time, in such form, and in such manner, as may be prescribed, with proof of payment of the amount payable at the rates specified in section 7.

(2) A separate application shall be made for each assessment year.

(3) The applicant shall

send a copy of the application made under sub-section (1) to the assessing authority, appellate authority or revisional authority under the relevant Act, before whom any proceeding or appeal or revision, as the case may be, is pending, within seven days from the date of making such application before the designated authority.

6. Determination of amount payable by the applicant. - (1) The designated authority shall 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 rates specified in section 7.

(2) The designated authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with application falls short of not more than ten per cent of the amount determined under sub-section (1).

(3) If the applicant has not paid ninety per cent of the amount payable under section 7 along with the application, the designated authority shall summarily reject the application.

(4) The amount determined under sub-section (1) shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, and, if such part is fifty paise or more, it shall be rounded off to the nearest rupee, and if such part is less than fifty paise, it shall be ignored.

7. Rate applicable in determining amount payable. - The amount payable by the applicant and

to be waived shall be determined as follows:-

(a) Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the application shall pay forty per cent of arrears of tax pending collection on the date of application along with interest calculated at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(b) Where it relates to arrears of tax, including any arrears of tax accrued due to non-filing of declaration forms which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay forty per cent of such arrears of tax pending collection on the date of application along with interest at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(c) Where it relates to arrears of tax, which was admitted as tax due as per returns filed for the year with corresponding arrears of penalty and interest, the applicant shall pay the entire arrears of tax pending collection along with interest at seven and a half per cent. per annum and on such payment, the balance of interest and the entire penalty shall be waived.

(d) Where it 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 applicant shall pay ten per cent of the penalty and twenty five per cent of interest, the balance of penalty and interest shall be waived?

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.''

9. Reverting to the case on hand, it appears that the petitioner has filed the applications for settlement of arrears under Samadhan Scheme for the assessment years 1991-92 and 1992-93 on the tax liability that was given effect to by the Assessing Officer pursuant to the Appellate Deputy Commissioners orders, dated 16.2.2010, viz.,
Tax Demanded Tax paid under Samadhan
1.Rs.1507404/- - Rs.1,14,428/-
2.Rs.1507404/- - Rs.4,18,941/-

Total: - Rs.5,33,369/-
3.Rs.1900134/- - Rs.52716/-
4.Rs.1900134/- - Rs.181897/-
Total: - Rs.2,34,513/-

10. The reason put forth by the respondents for rejection of the applications filed in Form-I under Sub Section (1) of Section 5 of the Act, 2010 by the petitioner under Samadhan scheme, for settlement of arrears pertaining to the assessment year 1991-92 and 1992-93, is that since the department has filed appeals against the portion of allowing the appeals in A.P.Nos.84 and 85 of 2009 dated 16.2.2010 filed by the petitioner by the Appellate Deputy Commissioner (CT) IV, Chennai before the Tribunal in S.T.A.Nos.30 and 84 and the said appeals are pending for adjudication and no finality was reached as on the date of presentation of the applications by the petitioner under Samadhan scheme and the said scheme is applicable only to settled demand and if any assessment or appeal proceedings are pending, then the demand as per the original order, i.e. assessment order, dated 30.10.2009 has to be taken as the basic demand for calculation of samadhan payment and since the petitioner had only remitted Rs.5,33,369/- and Rs.2,34,513/- along with Samadhan scheme application, which are below 90% of the tax payable under the scheme together with interest and hence, it has been held by the first respondent that the applications are not maintainable.

11. The reason given by the respondent while rejecting the applications filed by the petitioner, in my opinion, is not sustainable. It is not in dispute that by order dated 16.2.2010, the Appellate Deputy Commissioner has partly allowed the appeals filed by the petitioner as against the original assessment order, dated 30.10.2009. It is needless to mention that once the superior authority (Appellate Deputy Commissioner) passes an order, such order is binding on the lower authority (Assessing

Officer) who function under the jurisdiction of such superior authority and the order of the Tribunal is binding upon the Appellate Deputy Commissioner and the Assessing Officer who function under the jurisdiction of the Tribunal. Therefore, once the Appellate Deputy Commissioner has passed the order in the appeals which were preferred as against the original assessment orders, it would automatically supersede the orders of the Assessing Officer and thereby, the original assessment orders, dated 30.10.2009 are no longer in force, unless and until the order of the Appellate Deputy Commissioner is stayed or set aside by the Tribunal, which is the appellate authority over the orders of the Appellate Deputy Commissioner.

12. In this regard, it is worthwhile to refer the decision of the Hon'ble Supreme Court, in Union of India v. Kamlakshi Finance Corpn. Ltd., reported in 1992 Supp (1) SCC 443 wherein, it has been held as under in para 6:

6. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department in itself an objectionable phrase and is the subject matter of an appeal can

furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

13. In this case, it is not in dispute that as against the orders of the Appellate Deputy Commissioner, both the petitioner and the Government have preferred their appeals and since they are pending, as rightly contended by the respondents, the said appeals cannot be construed as withdrawn, however, for this reason, it is not justified to contend that since the appeals are pending before the Tribunal and the said proceedings have not reached a finality, the demand as per the original order has to be taken as the basic demand for consideration for the applications under Samadhan Scheme. In such view of the matter, this Court is of the view that the impugned orders are liable to be set aside. However, this Court makes it explicit that this order would not have any bearing on the appeal proceedings pending before the Tribunal and the respondents are always at liberty to proceed afresh if they succeed in the appeals.

For the foregoing reasons, the Writ Petitions are allowed and the impugned orders are hereby set aside. The first respondent is directed to entertain the applications filed by the petitioner under Samadhan Scheme and pass necessary orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. However, it is made clear that this order would have no bearing on the on the appeal proceedings pending before the Tribunal and the respondents are at liberty to proceed afresh if they succeed in the appeal. No costs."

7. As noticed above, in the present impugned order, the reasons, which have been cited by the respondent for rejecting the Application is identical to that of the case in Nippon Enterprises, which orders have been set aside (referred to supra). Thus, the issue being squarely covered by the said decision, the order impugned in this Writ Petition is also liable to be set aside.

8. For all the above reasons, the Writ Petition is allowed, the impugned order is liable to be set aside. The first respondent is directed to entertain the Application filed by the petitioner under Samadhan Scheme and pass necessary orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. However, this order would not have any bearing on the Appeal proceedings before the Tribunal, and the respondents are at liberty to proceed afresh, if they succeed in the Appeal. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Joint Commissioner (CT)
Chennai (East) Division
PAPJM Building, III Floor
Greams Road, Chennai-6

2. The Commercial Tax Officer
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- 1 cc to Mr.S.Ramanathan, Advocate Sr.No.71136
- +1 cc to The Government Pleader Sr.No.71355

W.P.Nos.25961 of 2017

CO(KS)

VS 22/11/2017