IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.41990 of 2006 & M.P.No.2 of 2006

M/s.Blue Star Limited,
46, Cathedral Road,
Chennai-600 086. ... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by
The Secretary to Government,
CT & RE Department,
Fort St. George, Chennai-600 009.

2.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
621, Anna Salai, Chennai-600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent above named relating to G.O.No.68 dated 18.07.2006, quash the said order dated 18.07.2006, passed therein and further direct the third respondent herein to complete the assessments of the petitioner for the assessment years 1995-96 to 2000-01 under the TNGST Act, 1959/CST Act, 1956 based on the returns already filed, duly waiving the procedure laid down under Section 12 of the TNGST Act, 1959 read with Section 9(2) of the CST Act, 1956 and by adopting the methodology relating to the earlier assessment years on par with the relief granted to other assessees faced with similar problems.

For Petitioner : Mr.R.L.Ramani, Senior Counsel
for B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel assisted by Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition challenging the order passed by the first respondent in G.O.Ms.No.68 dated 18.07.2006 and to direct the third respondent to complete the assessment of the petitioner for the assessment year 1995-1996 to 2000-2001 under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) and Central Sales Tax Act, 1956 (CST Act) based on the returns already filed by waiving the procedure laid down under Section 12 of the TNGST Act r/w. Section 9(2) of the CST Act by adopting the methodology relating to earlier assessment years on par with the relief granted to other assessees facing similar problems. The petitioner approached the first respondent with a request to waive the assessment procedure on account of the fire accident which occurred in the business premises of the petitioner on 11.01.2002.

3.The petitioner's case is that on account of the fire accident, entire records, books of accounts, etc. which were kept in the office premises were gutted down and are not available with the petitioner for production before the Assessing Officer and therefore, requested for waiver of the assessment procedure. The reason for approaching the first respondent with such a request is on account of the fact that the third respondent Assessing Officer issued notices to the petitioner for all the assessment years proposing to reject the claim for exemption on the ground that the petitioner did not file any details in support of such claim. The petitioner immediately made an application through proper channel for waiving the assessment procedure. The third respondent completed the assessments on best of judgment basis. This was challenged by the petitioner in W.P.Nos.43813 to 43816 of 2003. The said writ petitions were disposed of by a common order dated 10.12.2003 directing the Government to pass an order on the representation dated 06.02.2003 wherein the petitioner requested for waiving the assessment procedure. It is in pursuant to such direction, the impugned order has been passed by the Government, the first respondent. The petitioner placed reliance on the order passed by the Government in respect of another Company vide Government letter dated 02.12.1997 and also relied upon the order passed in favour of M/s.Binny Mills Limited. The respondent has rejected the petitioner's request primarily on three grounds. Firstly on the ground that the petitioner has been a defaulter in the sense that they did not produced the records, documents and books of accounts before the Assessing Officer on a yearly basis and kept the matters pending from the year 1995 onwards. It was further stated that the arrears of tax was to the tune of Rs.7.65 Crores which came to light only after inspection was conducted in the place of business of the petitioner between 1997 to 2002. Thirdly, it was stated that the order passed in favour of M/s.Binny Mills Limited cannot be applied to the petitioner as it was a case of natural calamity.

4.Learned Additional Government Pleader sought to sustain the impugned order by reiterating the reasons assigned therein. With regard to the allegation that there has been suppression, I find that there was no materials available on record to come to such a conclusion since even as per the pre-assessment notice dated 14.11.2002, there was no allegation of suppression but the exemption claim was sought to be denied on the ground that the petitioner has not produced any documents. Therefore, the observation made in the impugned order referring the petitioner's case as one of suppression is not supported by any material. Therefore, such a finding has to be set aside and eschewed. With regard to non-production of the books of accounts and documents before the Assessing Officer at the relevant point of time and blaming the petitioner for keeping the matter pending for several years from 1995 resulting in huge revenue loss, it is seen that the assessment were to be done under the provisions of the TNGST Act. Under the said provisions, the dealer is required to file the return and pay the taxes and thereafter, the Assessing Officer will issue notice to the dealer and for production of the books of accounts and the dealer has to submit the same and the assessment to be completed.

5.Record of the proceedings show that nothing appears to have been done by the Assessing Officer from 1995 onwards and for the first time action was initiated in the year 2003. Since the fire accident had occurred on 11.01.2002 and the records were gutted as soon as pre-assessment notices were received, the petitioner moved the first respondent through proper channel. Therefore to state that the petitioner is guilty of non-production of records at the appropriate time is an incorrect statement since there is no record to show that despite summons being issued to produce the records and books of accounts, the petitioner failed to do so. More importantly, the respondent did not dispute the fire accident and the same is admitted. In such circumstances, every step should be taken by the Assessing Officer as well as other respondents to complete the assessment at an earliest point of time. In so far as the petitioner is concerned, for the subsequent periods, namely, 2001-2002 and 2002-2003, assessments were completed on 30.06.2004, 31.01.2005 and 25.03.2005 respectively. The third reason for rejection of the petitioner's application is by stating that the decision taken by the Government in the case of M/s.Binny Mills Limited is not applicable to the petitioner's case since the said case was a case of natural calamity. This is an incorrect way of interpreting the said order passed by the Government. It is not the case of the respondents that the fire accident was deliberate or motivated and as long as there is no such allegation, the fire accident should be considered as a force majeure situation over which the petitioner had no control.

6.As pointed out earlier the respondents did not dispute the fire accident, the effect of the accident or any other matter. Thus the petitioner's request was entitled to be considered on par with the relief granted to M/s.Binny Mills Limited. One more reason to conclude that the petitioner cannot be branded as defaulter is on account of the fact that the returns for all the assessment years have been filed and taxes have been paid as per the assessment done by the petitioner themselves. Therefore, there is a statutory duty on the part of the third respondent to call upon the petitioner to produce the books of accounts and then finalize the assessment. For reasons best known, this never happened till 2003 and the matter was in limbo from 1995 onwards. Therefore, the petitioner cannot be solely blamed for the situation. It is not known as to why the Assessing Officer at that point of time did not take any proactive step in this regard. Therefore, it is better that the matter is left to rest at that stage. Thus, for all the above reasons, this Court is convinced that the impugned order has been passed based on irrelevant considerations and ignoring the relevant considerations which is sufficient to set aside the same.

7.In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the third respondent, the Assessing Officer who is directed to waive the assessment procedure as contemplated under Section 12 of the TNGST Act r/w. Section 9(2) of the CST Act and complete the assessment for all the assessment years after affording an opportunity of personal hearing to the petitioner. The above direction be complied with within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
The State of Tamil Nadu,
CT & RE Department,
Fort St. George, Chennai-600 009.

2.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

3.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
621, Anna Salai, Chennai-600 006.

+1 cc to Mr.B.Raveendran Advocate sr 84420
+1 cc to Spl Govt Pleader (Taxes) sr 84050

W.P.No.41990 of 2006 &
M.P.No.2 of 2006

kgk(co)

aa13/12/2017