IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.Nos.1374 to 1377 of 2006 (T)
O.P.Nos.131 to 134 of 2004

M/s.Addisons paints & Chemicals Ltd.,
Huzur Gardens, Sembium, Chennai.
.. Petitioner in all the WPs'

Vs.

1. The Joint Commissioner of Commercial Taxes (Revision Petition), Chennai - 600 005.

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

3. The Commercial Tax Officer, Perambur - I Assessment Circle, Chennai.
.. Respondents in all the WPs'

Prayer in W.P.No.1374 of 2006: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in R.P.No.JJ1/27009/2003, in respect of TNGST 1994-95 set aside the order dt.31.07.2003 therein and further direct the third respondent not to levy penal interest u/s.24 (3) of the TNGST Act, 1959 before the completion of assessment in respect of turnover liable to tax u/s.3(4) of the TNGST Act, 1959.

Prayer in W.P.No.1375 of 2006: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in R.P.No.JJ1/27010/2003, in respect of TNGST 1995-96 set aside the order dt.31.07.2003 therein and further direct the third respondent not to levy penal interest u/s.24 (3) of the TNGST Act, 1959 before the completion of assessment in respect of turnover liable to tax u/s.3(4) of the TNGST Act, 1959.

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Prayer in W.P.No.1376 of 2006: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in R.P.No.JJ1/27011/2003, in respect of TNGST 1996-97 set aside the order dt.31.07.2003 therein and further direct the third respondent not to levy penal interest u/s.24 (3) of the TNGST Act, 1959 before the completion of assessment in respect of turnover liable to tax u/s.3(4) of the TNGST Act, 1959.

Prayer in W.P.No.1377 of 2006: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in R.P.No.JJ1/27012/2003, in respect of TNGST 1997-98 set aside the order dt.31.07.2003 therein and further direct the third respondent not to levy penal interest u/s.24 (3) of the TNGST Act, 1959 before the completion of assessment in respect of turnover liable to tax u/s.3(4) of the TNGST Act, 1959.

Appearance of the counsels in all W.P.s

For Petitioner	:	Mr.B.Raveendran
For Respondents	:	Mr.S.Kanmani Annadurai Additional Government Pleader

COMMON ORDER

These Writ Petitions, which were initially filed before the Tamil Nadu Taxation Special Tribunal, Chennai, as Original Petitions have been transferred to the file of this Court, and re-numbered as Writ Petition Nos.1374 to 1377 of 2006.

2.Heard Mr. B. Raveendran, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annadurai, learned Additional Government Pleader for the respondents.

3.The petitioner is before this Court, challenging the orders passed by the first respondent, dated 31.07.2003, affirming the orders passed by the second respondent, dated 27.03.2003, rejecting the Revision Petitions filed by the petitioner as against the demand for penalty under Section 24 (3) of the Tamil Nadu General Sales Tax Act, 1959.

4.The Revision Petitions have been rejected only on the technical ground that, as against original assessment orders, dated 10.02.2003, the petitioner has not filed any Appeals but has preferred Revision Petitions against the orders passed by the third respondent, dated 20.02.2003, refusing to revise the

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assessment orders under Section 55 of TNGST Act. Therefore, the first Revisional Authority, viz., the second respondent and the second Revisional Authority, viz., the first respondent both concurrently held that the Revision Petitions are not maintainable.

5.I am unable to agree with the stand taken in the impugned orders, in the light of the fact that, the Section 55 of the TNGST Act provides for a remedy for the assessee to approach the Assessing Officer for any rectification. This is precisely what the petitioner/assessee has done on receipt of assessment orders by filing the Petition before the third respondent to issue revised proceedings. It was contended that, the turn over under Section 3(4) was arrived at before final assessment wrongly, and taxes, surcharge, additional surcharge and additional sales tax there on were also paid on the incorrect turn over, and based on this, interest was demanded and after the petitioner had corrected the mistake, they had approached the Assessing Officer/third respondent for rectification.

6.It cannot be disputed that, as against an order passed under Section 55 of the TNGST Act, a Revision lies to the second respondent. Therefore, the petitioner is entitled to question the orders passed by the third respondent, dated 20.02.2003, by way of Revision Petition, hence, the impugned orders passed by the second respondent, rejecting the Revision Petitions as not maintainable are incorrect. Consequently, the orders passed by the first respondent are also incorrect. Further, at the relevant point of time, assessments for the years 1994-95 to 1997-98 were not completed by the third respondent.

7.In the above circumstances, this Court is of the view that the Revision Petitions should be considered on merits. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded back to the second respondent, with a direction to take up the Revision Petitions filed by the petitioner under Section 55 of the TNGST Act, and afford an opportunity of personal hearing to the petitioner and pass fresh orders on merits and in accordance with law.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

cgi/sd

To
1. The Joint Commissioner of Commercial
Taxes (Revision Petition),
Chennai - 600 005.

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

3. The Commercial Tax Officer,
Perambur - I Assessment Circle,
Chennai.

+1cc to Mr.B.Raveendran, Advocate Sr.No.74338 dt.23/10/17
+1cc to Special Government Pleader SR.No.74272 dt.20/10/17

W.P.Nos.1374 to 1377 of 2006 (T)

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