IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

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THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

W.P.Nos.16343 to 16346 of 2004

M/s.B.S.K. Cotspin (P) Ltd.,
No.56, T.V.Samy Road West,
R.S.Puram,
Coimbatore – 641 002. ... Petitioner in all WPs.

Vs.

The Commercial Tax Officer,
R.S.Puram – West Circle,
Coimbatore – 641 018. ... Respondent in all WPs.

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the respondent in his proceedings CST Nos.642945/1996-97, 642945/1997-98, TNGST Nos.1960824/1997-98, 1960824/1998-99 and quash the impugned orders dated 06.08.2001, 31.12.2001, 31.12.2001, 31.12.2001 respectively, and further direct the respondent to give an opportunity to the petitioner to file all the relevant records, accounts and supporting documents and thereafter decide the issue in accordance with law and pass such further orders.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the TNGST Act, 1959, and CST Act, 1956, and they are aggrieved by the orders of assessment passed by the respondent under the TNGST Act for the assessment years 1996-97, 1997-98 and 1998-99 and the consequential recovery notice.

3. Admittedly, the petitioner did not file their objection to the pre-assessment notice and therefore, the Assessing Officer proceeded ex-parte and completed the assessment based on the available materials. Even thereafter, the petitioner did not file any appeal within the time permitted and allowed the matter to attain finality. After about three years, when recovery notice was issued, the petitioner rushed to this Court contending that they were not given adequate opportunity to explain that the petitioner have become a sick industry and they were going through the severe financial crisis. Therefore, this Court

entertained the writ petition and granted an order of interim stay on 17.06.2004.

4. Learned counsel for the petitioner pleads that opportunity may be granted to the petitioner to go before the Assessing Officer and submit their objections.

5. Heard the learned Government Advocate for the respondent on the above said submission.

6. Considering the fact that the writ petition has been pending from the year 2004 onwards and the order of stay has been in-force, as a result of which, recovery proceedings have been stopped, this Court is of the view that the matter can be remanded to the respondent for fresh consideration subject to certain conditions.

7. Accordingly, the writ petitions are disposed of by directing the petitioner to pay 25% of the disputed tax for all the four assessment years both under the CST Act as well as TNGST Act, within a period of six weeks from the date of receipt of a copy of this order. If the petitioner complies with the said

condition, they will be entitled to treat the impugned assessment orders as show cause notices and submit their objections within a period of 15 days therefrom. On receipt of the objection, the respondent is directed to afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. In the event the petitioner fails to comply with the above said condition, the benefit of this order will not enure to the petitioner and the writ petitions would stand automatically dismissed leaving it open to the respondent to enforce the recovery notice dated 25.02.2004 in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

06.07.2017

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Index: Yes/no
Internet: Yes/no

To

The Commercial Tax Officer,
R.S.Puram – West Circle,
Coimbatore – 641 018.

T.S.SIVAGNANAM, J.

Rkm

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