IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 09.07.2018
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.5956 to 5964 of 2018
and W.M.P.Nos.7329 to 7337 of 2018

M/s.Vijayalakshmi Mills Limited
Rep. by its Director
(Now known as M/s.RSL Textiles (India) Ltd.
Kuniyamurthur
Coimbatore. .. Petitioner in all W.Ps'

Versus

The Deputy Commissioner (ST)
Divisional Large Tax Payers Unit
Coimbatore. .. Respondent in all W.Ps'

Prayer in W.P.Nos.5956 to 5960 of 2018: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the impugned order in CST No.282006/1990-91, 1991-92, 1992-93, 1993-94, 1994-95 dated 21.02.2018 passed by the respondent herein, quash the same.

Prayer in W.P.Nos.5961 to 5964 of 2018: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the impugned order in TNGST No.210297/1990-91, TNGST No.234242/1992-93, TNGST No.234242/1993-94 and TNGST No.1921270/1997-98 dated 19.02.2018 passed by the respondent herein, quash the same.

For Petitioner : Ms.Aparna Nandakumar
(In all W.Ps')
For Respondent : Ms.G.Dhana Madhri
(in all W.Ps') Government Advocate

COMMON ORDER

Heard Ms.Aparna Nandakumar, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondent.

2. This is the second time the petitioner is before this Court challenging the impugned assessment proceedings under the provisions of the Central Sales Tax, 1956 (CST Act) for the assessment years 1990-91 to 1994-95 and the then Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) for the assessment years 1990-91 to 1993-94 and 1997-98. Earlier, the petitioner had filed W.P.Nos.14833 to 14838 etc. batch and W.P.No.20707 of 2012 challenging the assessment orders for all the above assessment years. The writ petitions were disposed

of by orders dated 26.06.2012 and 01.08.2012, pointing out that the respondent has not followed the provisions contemplated under Section 12-C of the TNGST Act and has not passed deemed assessment orders, accepting the returns filed by the petitioner and therefore, the assessment orders were quashed and a direction was issued to take up the matter and pass fresh assessment orders as per the provisions of law mentioned in the said order viz., Section 12-C r/w Sub Rule 5-E of Rule 15 of the TNGST Act. The respondent, on receipt of the orders passed in the writ petitions, issued notice to the dealer on various dates and since the dealer failed to turn up for the enquiry, a final notice was issued on 29.12.2017 and when, which was attempted to be served on one Tmt.Kausalya, she refused to accept the same and therefore, it was sent to the address by Registered post with acknowledgement, which was returned with an endorsement 'refused'. Therefore, the respondent has passed the impugned orders.

3. As rightly pointed out by the learned Government Advocate, this is not the case where the petitioner was not afforded an opportunity of hearing, but, it is the petitioner, who refused to avail the opportunity and therefore, the petitioner cannot stand to benefit out of their own wrong. This would have been sufficient for this Court, to dismiss all these writ petitions. However, the respondent, while completing the assessment, pointed out that the petitioner has not complied with the provisions of Section 12-C of the Act and not produced the required declarations and certificates for the relevant assessment years. The provisions of Section 12-C r/w sub Rule 5-E of Rule 15 of the TNGST Act makes it clear that the assessment has to be completed on the basis of the declarations and certificates, as prescribed, furnished by the dealer. Thus, if the petitioner has not furnished those certificates, then no benefit can be granted to the petitioner and they have to be taxed at higher rate.

4. Learned counsel for the petitioner pleads that one more opportunity to be granted to the dealer to produce those certificates. Hence, for such reason alone, this Court is inclined to grant one opportunity to the petitioner and this shall be a final opportunity. Accordingly, the petitioner is granted three weeks time, from the date of receipt of a copy of this order, to submit the certificates and declarations, by treating the impugned proceedings as show-cause notices and if those certificates and declarations are produced in proper format, then the respondent shall consider the same and pass fresh assessment orders. If the petitioner fails to produce the certificates and declarations, within the time stipulated by this Court, the benefit of this order will not enure to the petitioner and the writ petitions will stand automatically dismissed without further reference to this Court. The respondent shall be entitled to recover the tax and penalty as quantified in the assessment orders by initiating appropriate recovery proceedings.

5. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner (ST)
Divisional Large Tax Payers Unit
Coimbatore.

+1cc to Mrs.Aparna Nandakumar, Advocate SR.No.44420

VBA(CO)
sm:23.7.2018

W.P.Nos.5956 to 5964 of 2018