IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.11956 of 2018
and W.M.P.Nos.13943 & 13944 of 2018

Orders reserved on	Orders pronounced on
09.07.2018	18.07.2018

M/s.Trivitron Healthcare Private Limited,
Previously known as M/s.Trivitron Medical
Systems Private Limited,
Rep., by its Senior Manager - Taxation,
Chennai - 600 018. .. Petitioner

vs.

1.The Joint Commissioner (CT),
Chennai (East) Division,
No.1, Greams Road, III Floor,
Chennai - 600 006.

2.The Assistant Commissioner (CT),
Mylapore Assessment Circle,
Greenways Road Building,
No.46, Pasumpon Muthuramalingam Salai,
Taluk Office Building, R.A.Puram,
Chennai - 600 028.

3.Commissioner of Commercial Taxes,
Chepauk, Chenni - 600 005.

4.Government of Tamil Nadu
Rep., by its Secretary,
Commercial Taxes Department,
Fort St., George, Chennai - 600 009. ..
Respondents

Petitions filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Pro.Rc.8654/2011/A11, dated 24.09.2014, passed by the first respondent quash the same and direct the first respondent to accept the petitioner's application dated 30.12.2011, submitted in Form I and issue the certificate of settlement as per the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

For Petitioner : M/s.R.Charulatha for
M/s.Lakshmi Kumaran

For Respondents : Ms.G.Dhana Madhri, G.A.,

O R D E R

This Writ Petition has been filed challenging an order passed by the first respondent, dated 24.09.2014, rejecting the application filed by the petitioner under the provisions of the Tamil Nadu Sales Tax Settlement of Arrears Act, 2001, (hereinafter referred to as the "Settlement Act").

2. The reason for rejecting the application is on the ground that the petitioner has not paid 90% of the amount payable under Section 6(3) of the Settlement Act, along with the application and therefore, the application is liable to be summarily rejected.

3. Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondent raised a preliminary objection with regard to the maintainability of the Writ Petition on the ground that the impugned order is dated 24.09.2014, whereas the Writ Petition has been filed on 04.05.2018 and there is an inordinate delay and laches and therefore, the Writ Petition is liable to be dismissed. At the first blush, the argument of the learned Government Advocate appears to be impressive. However, on a closure look into the factual position, this Court is of the opinion that the petitioner should not be non-suited on the said ground for two reasons. Firstly, the proceedings is under the Settlement Act and if the applications have to be rejected on such technical grounds, the purpose of enacting a Settlement Act would stand defeated. Secondly, the petitioner filed application for settlement under the Act by their application in Form I, dated 30.12.2011. The said application was rejected by the impugned order dated 24.09.2014, after three years. The first respondent has not explained as to why there has been a delay of three years for consideration of the application. Therefore, when the first respondent is guilty of delay and laches, they cannot be permitted to contend that the petitioner has approached this Court belatedly.

4. The Assessing Officer of the petitioner, the second respondent has given parawise instructions to the learned Special Government Pleader vide his letter dated 28.06.2018, in which the stand taken in the impugned order has been reiterated in a more elaborate manner and the parawise comments for each of the paragraph are mostly repetitive. Further, it is submitted that as against the order of assessment, the petitioner should have filed an appeal and the present proceedings are not maintainable. The learned Government Advocate referred to the decision of the Hon'ble Division Bench of this Court in the case of Pandian Industries vs. The Joint Commissioner (CT), & Anr., W.A.(MD).No.396 of 2011, dated 08.01.2018, wherein the Writ Petitioner having failed to comply with the mandatory provisions under the Settlement Act, the application was rejected under Section 6(3) of the Act and the challenge to the said order of rejection was upheld by the Writ Court and affirmed by the Hon'ble Division Bench. Therefore, it is submitted that the petitioner having not complied with the statutory requirement, the application is to be summarily rejected and therefore, the impugned order is sustainable in law.

5. Ms.R.Charulatha, learned counsel for the petitioner would submit that the impugned order is arbitrary, as the first respondent has taken an erroneous decision to come to a conclusion that there is a short payment. It is submitted that in terms of Section 7(1), the amount payable by the applicant under the Settlement Act, where it relates to arrears of tax assessed on best of judgment, it is 40% of arrears of tax along with interest at 7.5%; where it relates to arrears of tax including any arrears of tax approved due to non-filing of declaration forms it is the same of 40% of the arrears of tax pending collection along with interest at 7.5%; where it relates to arrears of tax admitted as tax due, the entire arrears of tax along with interest at 7.5%; and where it relates to arrears of penalty or interest or both, 10% of penalty and 25% of interest. It is further submitted by the petitioner that clause (b) of Section 7(1) of the Settlement Act, would be attracted to the petitioner's case and the arrears of tax as a result of assessment order, confirming the differential tax demand is Rs.71,85,607/- and this differential demand is on account of non-submission of form-CH declarations under the CST Act. The petitioner paid a sum of Rs.29,60,000/- being 40% of the differential demand and interest thereon at 7.5%. It is submitted that Section 7(c) of the Act will not be attracted in the petitioner's case. The learned counsel referred to page 7 of the affidavit filed in support of the Writ Petition, where a calculation has been given and it is submitted that the mistake is on account of the error committed by the first respondent in arriving at the admitted tax due figure. Further, it is submitted that even assuming, without conceding that there is a

short payment as alleged under Rule 3(5) of the Settlement Rules, the respondent ought to have returned the application and granted 10 days time in terms of the statutory Rule. On the above grounds, the learned counsel submits that the impugned order may be set aside and the matter may be remanded back to the respondent for recomputing the actual tax due after affording an opportunity to the petitioner.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. This Court had an occasion to consider a batch of cases arising under the Settlement Act wherein, the concerned Joint Commissioner had rejected the application for varied reasons and one such reason being that 40% of the arrears of pending collection along with interest has not been paid. The Court considered as to whether the decision making process as adopted by the said Joint Commissioner was proper and in consonance with the provision of the Settlement Act and held as follows:-

> that the applications filed by the dealer were kept pending for two years and the delay remained unexplained. The applications should be verified by the designated authority under section 6(1), with regard to the correctness of the particulars furnished in the applications filed under Section 5 with reference to all relevant records and only thereafter could a determination of the amount payable at the rates specified in section 7 be arrived at. There was serious procedural flaw in the manner in which the dealer's applications were considered by the designated authority. Verification of the correctness of the particulars furnished in the applications made under Section 5 could not have been done without issuing notice to the dealer to produce books of accounts and relevant records. No material was produced to show that the dealer was issued such notice to produce records based on which the rate applicable under Section 7 was determined. The designated authority took up the applications for scrutiny and stated that the computation made by the dealer was incorrect as it was required to pay not only 40 percent of the arrears of tax pending collection assessed on best of judgment due to non-production of accounts or non-filing of declaration, but also the arrears of tax admitted in the returns. Since the assessment itself was on best of judgment basis, the

designated authority proceeded to calculate the amount payable and based on that rejected the applications. The procedural infirmity went to the root of the matter. The orders passed by the designated authority rejecting the dealer's applications were liable to be set aside with a direction to the designated authority to re-consider the entire matter in terms of the scheme of the Act.

8. As pointed out earlier, the application for settlement filed by the petitioner was kept pending for three years and without affording an opportunity to the petitioner to make out any deficit (assuming so), the first respondent should not have rejected the application, especially when, Rule 3(5) provides for 10 days time to be granted for making good the deficit, if any. Apart from that, while computing the amount payable by the petitioner for being entitled to pursue the application under the Settlement Act, the authority should have afforded an opportunity to the petitioner, especially when, decision was taken after three years, after the application was lodged.

9. The learned Government Advocate argued that the petitioner by letter dated 30.11.2012, accepted that they are willing to pay differential amount, which shows that they admitted their lapse. However, I find from the letter, there is no candid admission of any lapse, but such agreement to pay the differential amount is an alternate submission, as they have specifically stated that they have made the payment under the Act to the tune of Rs.29,60,000/-. Thus, they contended that whatever has been paid by them is the appropriate amount, however, agreed to make good any deficit. Thus, what was stated by the petitioner can at best be treated as a concession and not an unequivocal admission.

10. In the light of the procedural flaw committed by the first respondent in considering the application filed by the petitioner for settlement, this Court is inclined to interfere with the impugned order.

11. In the result, the Writ Petition is allowed, impugned order is set aside and the matter is remanded to the first respondent with a direction to the first respondent to afford an opportunity of personal hearing to the petitioner, hear their submissions and still if the first respondent is not satisfied and holds that there is a deficit payment, then the first

respondent is directed to give reasonable time to the petitioner to effect such payment and proceed to finalise the application under the Settlement Act as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT),
Chennai (East) Division,
No.1, Greams Road, III Floor,
Chennai - 600 006.

2.The Assistant Commissioner (CT),
Mylapore Assessment Circle,
Greenways Road Building,
No.46, Pasumpon Muthuramalingam Salai,
Taluk Office Building, R.A.Puram,
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3.Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

4.Government of Tamil Nadu
Rep., by its Secretary,
Commercial Taxes Department,
Fort St., George, Chennai - 600 009.

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No.47376

+1cc to the Government Pleader, S.R.No.48146

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CA(CO)
GSP(31/07/2018)