IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.1416 & 1417 of 2018
and
W.M.P.Nos.1802 to 1805 of 2018

M/s.Tech Sharp Engineers Pvt Ltd.,
Rep.by its Managing Director - M.Mathew,
No.C-39, 2nd Avenue, Anna Nagar,
Chennai - 600 040. ...Petitioner in both W.Ps.

Vs.

1. State of Tamil Nadu,
Rep.by its Secretary to Government,
Department of Commercial Taxes &
Religious Endowments,
Fort St.George,
Chennai - 600 009.

2. Assistant Commissioner [CT][Main],
Aminjikarai Assessment Circle,
Kuralagam Annexe Building, III Floor,
Chennai - 600 108.

..Respondent in both W.Ps.

Prayer in W.P.No.1416 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the 2nd Respondent in his impugned proceedings made in TIN/33071022336/2011-12 dated 20.06.2014 quash the same as illegal and contrary to the scheme of the Act.

Prayer in W.P.No.1417 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the 2nd Respondent in his impugned proceedings made in TIN/33071022336/2012-13 dated 20.06.2014 quash the same as illegal and contrary to the scheme of the Act.

For Petitioners in both W.Ps : Mr.S.Rajasekar

For Respondents in both W.Ps : Ms.G.Dhanamadhri
Government Advocate

C O M M O N O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate(Taxes) for the respondents. With consent of learned counsel on either side, the writ petitions are taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the 2nd respondent under the provisions of the Tamil Nadu Value Added Tax, 2006[hereinafter referred to as "the TNVAT Act"] and the Central Sales Tax Act, 1956[in short "the CST Act"] is aggrieved by the assessment orders passed by the 2nd respondent dated 20.06.2014 under the provisions of the "TNVAT" Act for the assessment year 2011-12 and 2012-13.

3.Admittedly, the petitioner did not give their proper objections to the revision notice resulting in the impugned assessment order being passed. It appears that the assessment orders themselves were not received by the petitioner and they state that there were labour problems during the relevant point of time and the factory had to be closed. However, this has not been substantiated before this Court.

4.Be that as it may, the petitioner pleads that one more opportunity to be granted to them to go before the Assessing Officer and explain that there is no cause for reversal of the input tax credit availed by the petitioner. The learned counsel for the petitioner would state that the petitioner is under severe financial crisis and there are arrears and the other taxation statutes as well and distraint action has been initiated against the petitioner. Therefore, it is submitted that one more opportunity may be granted to the petitioner.

5.The learned Government Advocate resisted the prayer sought for by the petitioner by contending that the assessment orders were passed in the year 2014 and the petitioner was not diligent in prosecuting the appellate remedy available under the Act and no indulgence should be granted to the petitioner.

6.On hearing, the learned counsel for the parties and perusing the materials placed on record, I find that this is a case where one more opportunity can be granted to the petitioner to go before the Assessing Officer, broadly for two reasons. Firstly, though the impugned assessment orders were passed as early as on 20.06.2014, the 2nd respondent has not been able to recover a single paise towards tax or penalty. Thus, the assessment orders have remained as paper orders. The second reason being that the revision of assessment for the relevant assessment years is on account of the details which has been gathered by the 2nd respondent from the departmental website. Thus, for the above two reasons, this Court deems it appropriate that one more opportunity can be granted to the petitioner subject to certain conditions.

7.In the light of the above, the writ petitions are disposed of by directing the petitioner to pay 25% of the disputed tax for each of the assessment years within a period of eight weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition within the time stipulated, the petitioner is entitled to treat the impugned assessment orders as show cause notices and submit their objections within fifteen days therefrom which shall be considered by the 2nd respondent and the assessment may be read after affording an opportunity of personal hearing to the authorized representative of the petitioner. In the event, the petitioner fails to comply with the above condition in payment of the disputed tax amount within a time permitted the benefit of this order will not enure to the petitioner and the writ petitions would stand automatically dismissed without reference to this Court giving liberty to the 2nd respondent to proceed for recovery of the disputed tax and penalty as quantified in the impugned assessment orders. No Costs. Consequently, connected miscellaneous petitions are also closed

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. Secretary to Government,
   State of Tamil Nadu,
   Department of Commercial Taxes &
   Religious Endowments,
   Fort St.George,
   Chennai - 600 009.

2. Assistant Commissioner [CT][Main],
   Aminjikarai Assessment Circle,
   Kuralagam Annexe Building, III Floor,
   Chennai - 600 108.

+2cc to Mr.Hemalatha, Advocate, S.R.No.5944

+1cc to the Special Government Pleader, S.R.No.6102

W.P.Nos.1416 & 1417 of 2018

GSP(16/02/2018)