IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2018

Coram

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

W.P.Nos.34297 to 34300 of 2012
&
M.P.Nos.1 to 1 of 2012

Mr.R.Vijayakumar ... Petitioner in all WPs

Vs.

1.The Joint Commissioner (CT) (FAC)
Salem Territorial
Salem

2.The Assistant Commissioner (CT)
Gugai Assessment Circle
Salem ...Respondents in all Wps

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in SA MU.C.BA.VA.No.226/2009/A11 dated 23.08.2012 relating to the assessement year TNGST 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97 and quash the same and further direct the first respondent to pass fresh orders after considering the petitioner's reply dated 13.12.2011 and 05.01.2012 in accordance with law.

For Petitioner : Mr.P.Rajkumar
(IN ALL WP'S)

For Respondents : Ms.G.Dhanamadhri
(IN ALL WP'S) Government Advocate

ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondents.

2. The petitioner has filed these Writ Petitions challenging orders passed by the first Respondent and for a consequential direction to pass fresh orders by considering the petitioner's reply dated 13.12.2011 and 05.01.2012 in accordance

with law.

3. The facts, which are necessary for the disposal of the Writ Petition, are that the petitioner, which is a Private Limited Company, was registered as a dealer on the file of the second respondent under the provisions of Tamil Nadu General Sales Tax Act, 1955, (TNGST Act). The petitioner sought for the benefit of Interest Free Sales Tax deferral for a period of five years, which was granted vide G.O.Ms.No.500, Industries (MIG.II) Dept. dated 14.5.1990 and consequential orders passed by the State Industries Promotion Corporation of Tamil Nadu (SIPCOT) vide proceedings dated 26.03.1992 in terms of the deferral scheme. The petitioner was eligible for deferral of Sales Tax not exceeding Rs. 65.67/- lakhs interest free for five years from the month in which the Company commenced commercial production, the period being from 01.02.1992 to 31.01.1997.

4. The petitioner in the affidavit filed in support of the writ petition has given the details of the repayment made by the petitioner by availing the benefit of the deferral scheme. It is the submission of the petitioner that they had availed the benefit of Rs.17,76,674/- only till the closure of availment period and after the repayment period commenced, the petitioner started remitting the tax. Due to certain problems faced by the petitioner, the company closed its production activities on and from 20.02.1988 and was sealed by their bankers for non-compliance of the financial repayments. Since the company was under financial constrain and could not repay the tax which was availed by it under the deferral scheme, they filed an application before the first respondent under the provisions of Tamil Nadu Sales Tax (Settlement of Arrears), Act 2008 (hereinafter called as "Settlement Act"). In the application, they sought for settlement of the arrears payable by them under the deferral scheme. The applications were filed by the petitioner before the first respondent on 31.03.2009 relating to the arrears payable for the assessment years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. The petitioner had paid a total amount of Rs.28,66,580/- together with Rs.1,30,254/- being the interest calculated till the date of payment. Though the application was pending before the first respondent, there was no progress on the same and repeatedly notices were issued to the petitioner to effect payment of the difference in interest amount calculated from 20.05.1997. The petitioner's case is that they have paid the deferral amount in September 1997, but since the agreement entered into for the purpose of enjoying the benefit of the deferral scheme was not cancelled till 1998, the interest cannot be demanded as per the notices issued by the first respondent.

5. For the said notice, the petitioner submitted objections dated 13.12.2011, pursuant to which the first respondent afforded an opportunity of personal hearing on 30.12.2011. Since the petitioner had certain personal issues he could not attend the personal hearing and by letter dated 29.12.2011 sought for adjournment. This adjournment letter has been received in the office of the first respondent on 30.12.2011, as could be seen from the endorsement in the Letter Delivery Book. Thereafter, the petitioner has submitted an elaborate report on 05.01.2012 as to how the payment of interest, as demanded by the first respondent, is not justified. The petitioner placed reliance on the decision of a Division Bench of this Court in M/s.Amutha Mills Private Limited Vs. The Assistant Commissioner and two others in W.A.No.1482 of 2006 etc., dated 06.12.2006. The petitioner placed reliance on the said decision for the preposition that in terms of the circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994, it is only in the form of recommendation and the term has not been specifically incorporated in the agreement and therefore, the appellant therein was held to be liable to pay the penal interest only with effect from June 2013.

6. Though the petitioner had submitted an elaborate objection on 05.01.2012, which is shown to have been received in the office of the respondent on 09.01.2012, the first respondent has issued the impugned demand and I find that there is absolutely no reference to the report given by the petitioner except for the notice issued by the first respondent dated 27.10.2011. I am informed that the impugned order has been passed by a different officer other than the officer who had afforded an opportunity of personal hearing to the petitioner vide notice dated 15.12.2011, for which the petitioner had sought for adjournment.

7. Thus, in my considered view, the impugned demands have been made without reference to the representation given by the petitioner and without dealing with the jurisdictional issue, which has been raised by the petitioner. Therefore, the first respondent is required to reconsider the entire matter after affording an effective opportunity of personal hearing to the petitioner.

For the above reasons, the writ petitions are allowed and the impugned demand notices are set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner is directed to submit a fresh representation enclosing the earlier representations and the judgment of the Hon’ble Division Bench and place it for consideration of the first respondent within a period of 10 days from the date of receipt of a copy of this order. On receipt of such report, the first respondent shall fix a date for personal hearing and provide an effective opportunity to the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT) (FAC)
Salem Territorial
Salem

2.The Assistant Commissioner (CT)
Gugai Assessment Circle
Salem

+1cc to Mr.P.RAJKUMAR, Advocate, S.R.No.49752

W.P.Nos.34297 to 34300 of 2012 &
M.P.Nos.1 to 1 of 2012

EV(CO)
TR(07/08/2018)