IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No. 25371 of 2018
in
W.M.P.No. 29517 of 2018

M/s.Wockhardt Limited,
Represented by its Senior Manager,
Mr.S.Srinivasan
No.75, T.T.K. Road,
Century Centre, 3rd Floor,
Alwarpet,
Chennai - 600 018. ..Petitioner

vs.

1. The Joint Commissioner,
   Commercial Taxes Department,
   Chennai East Division,
   Third Floor, PAPJM Building,
   Greams Road, Chennai - 600 006.

2. The Assistant Commissioner (ST),
   Royapettah Assessment Circle,
   No.46, Pasumpon Muthuramalingam Road,
   Second Floor,
   Chennai - 600 028. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the Impugned Notice dated 30.08.2018 passed in CST/41352/1984-85 on the file of the 2nd Respondent, quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mrs.G.Dhana Madhri
Government Advocate

O R D E R

The petitioner is aggrieved against the proceedings of the second respondent dated 30.08.2018, wherein and whereby the request of the petitioner to remit the balance amount payable under Section Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 known as Samadhan Act 2010, was rejected as not entertainable and with a further direction to the petitioner to pay the entire difference amount of Rs.23,81,778/- immediately.

2. The case of the petitioner is as follows:

The petitioner is a public limited company and an assessee on the file of the second respondent. For the assessment year 1984-85, the petitioner company reported a total and taxable turnover of Rs.3,25,08,309.37/- and Rs.1,42,20,951.46/-. The second respondent/ Assessing Officer through order dated 31.01.2002, determined a total and taxable turnover as Rs.3,25,08,309/- on the ground that no records were produced. The petitioner filed a statutory appeal before the Appellate Assistant Commissioner (CT). The Appellate Authority by order dated 10.06.2002, applied 50:50 ratio and modified the assessment order. The petitioner preferred further appeal before the Tamil Nadu Sales Tax Appellate Tribunal, which in turn by its order dated 19.06.2007, dismissed the appeal filed by the petitioner and allowed the appeal filed by the department. Thus, the Tribunal restored the assessment order. Subsequent to the introduction of Tamil Nadu Sales Tax (Settlement of Arrears) Act 2010, the petitioner filed Form I and paid a sum of Rs.3,29,085/- on 13.12.2010. The petitioner was under the bonafied impression that the issue has been settled under the above said Samadhan Act and they would be issued with certificate under Section 8 of the said Act. However, after a period of five years, the first respondent issued a notice dated 12.01.2015, to show cause as to why the settlement arrears of proposals could not be rejected. The petitioner filed their objection on 11.03.2015, reiterating the contentions already raised, also by stating that if the mistake was pointed out in the year 2010 itself, they would have remitted the balance amount. Thereafter nothing had happened for nearly 29 months. Suddenly, a notice dated 19.09.2017 was served on the petitioner to appear for personal hearing on 5.10.2017. The petitioner appeared in person and made their submission before the first respondent on 23.10.2017. After nearly 10 months, the second respondent issued the notice impugned in this writ petition and directed the petitioner to pay the amount referred to therein immediately.

3. Mr.K.Govi Ganesan, learned counsel appearing for the petitioner submitted that when the petitioner has made the application under the Samadhan Scheme as early as on 13.12.2010 and also paid a sum of Rs.3,29,085/-, the authorities should have informed the petitioner within 10 days as provided under Rule 3(5) of Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2011 and called upon the petitioner to pay the difference of tax if any. Thus, he submitted that in the absence of any such communication, the application filed by the petitioner cannot be rejected after a period of nearly 8 years. He further contended that apart from the above said aspect, the impugned order is also liable to be interfered with on the ground of want of jurisdiction on the second respondent, as the entire proceedings commencing from the filing an application was pending only before the first respondent, who in turn issued the notice of proposal to reject the application on 12.01.2015 and thereafter, he has not passed any order so far. Therefore, he contended that the second respondent has no jurisdiction to reject the application by way of the present impugned order dated 30.08.2018.

4. Mrs.G.Dhana Madhri, learned Government Advocate appearing for the respondents, on the other hand submitted that it is true that the petitioner was not called upon to pay the deficit tax within the time stipulated under the above said rules and that the said application was kept pending for nearly five years. He further submitted fairly that the issue involved in this case is covered in favour of the petitioner in the order made in W.P.No.11956 of 2018 dated 18.07.2018, where the learned Judge, under similar circumstances, allowed the writ petition and remanded the matter to the first respondent to consider the application filed by the petitioner therein, under the Samadhan Scheme.

5. Heard both sides.

6. There is no dispute to the fact that the petitioner has filed an application under Form I on 13.12.2010, under Section 5 (1) of Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010. It is stated by the petitioner that along with the application, the petitioner has paid a sum of Rs.3,25,085/- and the factum of such payment is not disputed by the Revenue, as it is evident from the impugned order itself that the said sum was given credit to. There is no dispute to the fact that immediately after filing the said application, the petitioner was not called upon to pay any deficit tax as required under the said rule.

7. On the other hand, the very notice of proposal to reject the petitioner's application itself was issued after nearly 5

years that is on 12.01.2015, that too by the first respondent. It is further seen that thereafter the notice of personal hearing was given by the first respondent, before whom the petitioner appeared and explained. Such being the factual position, the second respondent has chosen to pass the impugned order, which, in my considered view, is not only outside his jurisdiction and also is unsustainable on the reason that such rejection cannot be made after a period of nearly 5 years especially, when the Revenue is bound to inform the petitioner to make the deficit Tax if any, to be paid within a period of 10 days. In the absence of any such communication, the petitioner cannot be faulted on any account. It is also an admitted fact that the first respondent has not passed any order so far. Further, it is seen that under similar circumstances, the learned Judge of this Court passed an order in W.P.No.11956 of 2018 wherein at paragraphs nos. 8, 10 & 11 is stated as follows:

> "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.
>
> ....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.
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> 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."

8. Considering the above stated facts and circumstances, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back

to the first respondent to consider the application filed by the petitioner and pass appropriate orders on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni/vri

To

1. The Joint Commissioner,
   Commercial Taxes Department,
   Chennai East Division,
   Third Floor, PAPJM Building,
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2. The Assistant Commissioner (ST),
   Royapettah Assessment Circle,
   No.46, Pasumpon Muthuramalingam Road,
   Second Floor,
   Chennai - 600 028.

+1cc to The Special Government Pleader(Taxes)sr.no.71342
+1cc to Mr.K.Govi Ganesan, Advocate sr.no.70814

W.P.No. 25371 of 2018

ss(co)
nr 29/10/2018