BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2018

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.7678 to 7680 of 2018
and
W.M.P.(MD)Nos.7298 to 7300 of 2018

Kalpataru Power Transmission Limited,
(Represented by its General Manager – Taxation, Jayendra Shah),
49 – T, Bawa Building, Second Floor,
North Street, Kailasapuram,
Tirunelveli Junction – 627 001. ... Petitioner in all W.Ps.

-Vs-

The Assistant Commissioner,
Palayamkottai Assessment Circle,
Palayamkottai. ... Respondent in all W.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in TNGST No.5563701/2006-07, (April 2006 to December 2006), TIN:33305563701/2006-07 and TIN:33305563701/2007-08, dated 01.03.2018, quash the same as illegal and contrary to law, and direct restoration / refund of the sum of Rs.27,86,047/-, Rs.28,83,956/- and Rs.63,66,609/- acknowledged by the earlier proceedings in TNGST:5563701/2006-07, TIN:33305563701/2006-07 and TIN:33305563701/2007-08 dated 31.07.2015, 08.01.2015 and 08.01.2015 respectively along with Form “C”, “P” and “P” for refund.

For Petitioner : Mr.N.Prasanth for
M/s.Surana & Surana
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
(in all W.P.s)

COMMON ORDER

Challenge in these Writ Petitions is to the orders of the respondent in TNGST No.5563701/2006-07, (April 2006 to December 2006), TIN:33305563701/2006-07 and TIN:33305563701/2007-08, dated 01.03.2018, wherein, a request for refund of tax deduction was made. The writ petitioner is the company involving in execution of Power Transmission Projects. For the assessment years, for the period from 01.04.2006 to 31.12.2006, 01.01.2007 to 31.03.2007 and 01.04.2007 to 31.03.2008, the excess payment of tax arising out of the excess TDS deducted at source is directed to be refunded, by virtue of orders dated 31.07.2015, 20.12.2008 and 08.01.2015. Since refund was not given, the petitioner approached this Court by way of filing W.P.Nos.421 to 423 of 2017, wherein, directions were issued for refund. To get over the directions of this Court, the respondent issued a purported notice dated 21.09.2017 to re-open the completed assessment under Section 3B of the Tamil Nadu General Sales Tax Act, 1959, [hereinafter referred to as "the TNGST Act"]. The petitioner filed his objection on 23.01.2008 and it was acknowledged on 06.02.2008. In view of Section 12-C of the TNGST Act, the respondent has no jurisdiction to issue notice. But, the respondent has passed the impugned order dated 01.03.2018 holding that the order dated 31.07.2015 granting refund is not correct and legal. Aggrieved over the same, the present Writ Petitions have been filed by the writ petitioner alleging violation of principles of natural justice, wrong application of law and exercising power conferred under Section 7-F(6) of the TNGST Act.

2. Per contra, the respondent contended that the petitioner claimed TDS as under:

Sl.No	Writ Petition Nos.	Assessment Year	Refund Claimed Rs.	Deemed Assessment
1	WP 7678/2018	2006-07	27,86,047/-	31.03.2010
2	WP 7679/2018	Jan.2007 to March 2007	28,83,975/-	30.06.2012
3	WP 7680/2018	2007-08	63,66,609/-	30.06.2012

which is barred by limitation.

3. Though the learned counsel appearing for the petitioner has drawn the attention of this Court to various provisions under the TNGST Act as well as the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as "the TNVAT Act"], more particularly, Section 7-F of the TNGST Act and Section 13 of the TNVAT Act demonstrate erroneous approach of the respondent, the learned counsel appearing for the petitioner, more particularly, would submit that there is violation of principles of natural justice, as fair opportunity was not given and the proposals did not reflect the appropriate provision of law and thus, he was not in a position to explain his stand.

4. I have considered the rival submissions made by both sides.

5. On a perusal of the materials available before this Court, it is seen that the petitioner claimed tax exemption for the year 2006-07. The respondent had afforded opportunity to the petitioner to file their objections and also afforded personal hearing by issuing notice, pursuant to which, Thiru.R.D.Ganesan, learned counsel representing the Company and Thiru.J.Ganesh, Authorised Representative of the Company appeared before the Assessing Officer on 07.12.2017 to discuss the defects pointed out in the notice and requested time to file reply. Thereafter, Mr.T.Jayendra Govindlal

Shah, Authorised Signatory of the Company and Mr.J.Ganesh, Authorised Representative of the Company appeared before the Assessing Officer on 11.01.2018 and requested further time to file reply. In order to follow the principles of natural justice, adequate time was granted and the writ petitioner filed their objections on 06.02.2018.

6. It is the contention of the writ petitioner that as per the provision, summary assessment under Section 12-C of the TNGST Act, should have been completed within the time stipulated. The total and taxable turnover declared by the dealer in his return was not done within the time and hence, the order passed under Section 12-C of the Act on 31.07.2015 is not valid.

7. In the impugned orders also, it was found that the assessment for the year 2006-07 under TNGST Act should be completed on 31.03.2010. But, the Assessing Officer has passed the order under Deemed Assessment Basis beyond the time limit i.e, 31.03.2010. This order was accepted by the dealer himself and therefore, the claim for refund was rejected on the basis of an incorrect and invalid order.

8. From the above, it is very clear that the order was passed after giving due opportunity to the petitioner. There are alternative remedies available to the petitioner against the order impugned. Without availing such alternative remedies, the Writ Petitions are not maintainable. Since the principles of natural justice have been meticulously complied with by affording ample opportunity to the writ petitioner, this Court is not inclined to interfere with the impugned orders passed by the respondent.

9. In view of the above, the Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The Assistant Commissioner,
Palayamkottai Assessment Circle,
Palayamkottai.

+ 3 CC TO M/s.SURANA & SURANA, IN SR Nos. 62430 to 62432
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62484

SM
TE/SKN-RSK/SAR-2 : 11/06/2018 : 3P/6C

Common Order made in
W.P.(MD)Nos.7678 to 7680 of 2018
Dated:19.04.2018
(1/2)