IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14817 to 14820 of 2007
and
W.M.P.Nos.1,1,1, & 2 of 2007

M/s. Utra Chem (P) Ltd.
S.F. No.505, Avanashi Main Road,
Vanjipalayam, Tirupur - 3.
... Petitioner in all W.Ps

Vs.

1.The Commercial Tax Officer,
Avanashi.

2.The Assistant Commissioner (CT),
Coimbatore
... Respondents in all W.Ps.

Common Prayer: The Writ Petitions are filed under article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in TNGST:2082277/02-03, TNGST:2082277/03-04, TNGST:2082277/04-05 and Ref:2084/05-06/A4 respectively and quash the impugned proceedings dated 05.04.2007 initiated pursuant to the instructions of the 2nd respondent being contrary to the provisions of the TNGST Act, 1959, dated 05.04.2007.

For Petitioner (in all W.Ps.) : Mr.V. Sundareswaran.
For Respondents (in all W.Ps.) : Mr.Mohammed Shaffiq
Spl. Govt. Pleader (Tax)

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C O M M O N O R D E R

Heard the learned counsel for the petitioner and the learned Spl. Govt. Pleader (Tax) for the respondents.

2. Short point that arises for consideration in these writ petitions are whether the 1st respondent was justified in issuing impugned pre-assessment notices dated 05.04.2007 to the

petitioner for the period prior to the repeal of the TNGST Act, 1959, under the provisions of TNVAT Act, 2006.

3. According to the petitioner, the impugned notices are without jurisdiction and are liable to be quashed as no concurrence of the Deputy Commissioner having jurisdiction over the petitioner was obtained under the provisions of Rule 15(6) of the TNGST Rules, 1959,

4. Per contra, the learned Special Government Pleader appearing for the respondents submits that there is saving under Section 88(3) of the TN VAT Act, 2006 and therefore, the impugned notices were valid and therefore the petitioner was not justified in filing the present writ petitions. It is further submitted that the petitioner had failed to file returns and furnish the documents pursuant to summons dated 24.04.2006 and by their communication dated 4.5.2006, the petitioner requested for 15 days time to produce the accounts. However, the petitioner failed to do so. Therefore, a notice was issued on 30.10.2006 which was followed by the impugned notice.

5. I have considered the arguments advanced and perused the records. For the respective assessment years, it appears that the petitioner had not filed sales tax returns and had not paid tax. Therefore, the 2nd respondent issued summons to the petitioner to produce relevant documents. Since there were no compliance by the petitioner, a proposal notice was issued to arrive at an assessment based on the best judgment method. The petitioner was asked to file its reply on or before 10.11.2006. However, the petitioner again failed to comply.

6. During the interregnum, TNGST Act, 1959 was replaced with T.N. VAT Act, 2006. It came into force with effect from 1.1.2007. Thereafter, the impugned notices were issued. The petitioner asked for one month time vide letter dated 12.04.2007. After seeking time, curiously, the petitioner proceeded to file the present writ petitions on 18.04.2007.

7. Under Sub-Clause (a) of 88(3) of TN VAT Act, 2006, there is saving of proceedings already initiated under the repealed TNGST Act, 1954. Under Sub-clause (b) of the said provision, tax due under the repealed enactment shall be levied, assessed and collected under the Provisions of the Act, as if T.N.VAT Act, 2006 was in force during the period in dispute.

8. Section 88(3) of the T.N. VAT Act, 2006 reads as under:-

"(3) Notwithstanding the repeal of the said Act or 1970 Act, as the case may be,

(a) any action or proceedings already initiated under the said Act or 1970 Act, as the case may be, shall validly be continued under the provisions of the said Act or 1970 Act, as the case may be which relates to the period prior to the coming into force of this Act;

(b) any person liable to pay any tax, fee, penalty interest or other amount under the said Act or 1970 Act, as the case may be, for any period before coming into force of this Act, shall be levied, assessed and collected under the provisions of the Act, as if this Act were in force during the said period.

(c) any fee paid for registration or renewal of such registration under the said Act, shall be deemed to have been paid for the registration under this Act.

(d) any person appointed by the Government as the Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and Commercial Tax Officer under Section 28 of the said Act and continuing in office as such immediately before the commencement of this Act, shall,on and from the date of commencement of this Act, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Commissioner, Joint Commissioner, Assistant Commissioner and Commercial Tax Officer;

(e) the Chairman or any members of the Appellate Tribunal appointed under Section 30 of the said Act and continuing in office as such immediately before the commencement of this Act, shall, on and from the date of commencement of this Act, be deemed to have been appointed as the Chairman and members of the Appellate Tribunal under this Act and shall continue in office as such till he ceases to be such Chairman or member;

(f) the officers of the enforcement wing who had jurisdiction and power under the said Act or 1970 Act, as the case may be, immediately before the commencement of this Act, be deemed to have been continued, and shall have jurisdiction and powers, under this Act;

(g) any accounts, registers or documents of any dealer retained before the commencement of this Act under any of the provisions of the said Act or 1970 Act, as the case may be, shall on the day immediately before the commencement of this Act, continued to be retained in accordance with the provisions of this Act;

(h) any goods including goods detained before the commencement of this Act under any of the provisions of the said Act or 1970 Act, as the case may be, and not released before the commencement of this Act, shall continue to remain detained until such goods are released in accordance with provisions of this Act.

(i) all rules, regulations, notifications, clarifications or orders made or issued under any of the provisions of the said Act or 1970 Act, as the case may be, and continuing in force on the date immediately before the commencement of this Act, shall continue in force on or after such date in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder until they are repealed or amended."

9. Under the provisions of the erstwhile of Rule 15(6) of the TNGST Rules, 1959 an assessing officer was required to finally assess tax payable by an assessee according to best of his Judgment provided concurrence of the Deputy Commissioner was obtained by following the procedure prescribed under rules 11 and 12 of the aforesaid Rules. Rule 15(6) read with Rule 11 of TNGST Rules, 1959 permitted the provisional determination of the annual tax or taxes at the rate or taxes payable at the rate specified under the relevant provisions. Rule 12 of TNGST Rules, 1959 stated that if no returns was submitted by a dealer, before taking action under Rule 11, notice to the dealer may be issued and the officer may make such enquiry as he considers necessary. This was done. There was no necessity to get a concurrence before the issuance of notice for the purpose of demanding tax. However, before proceeding further the TNGST Act, 1959 and Rules made thereunder were repealed.

10. These rules read as under:

> Rule 15(6). If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority may, after following the procedure prescribed in rules 11 and 12 , finally assess the tax or taxes payable under 1[sections 3,3-A,3-B,3-C,3-D, 3-E, 3-G, 3-H, 3-I, 3-J,2 [4, 4-F, 5,7,7-A,7-C 7-D or 7-E]] according to the best of his judgement.
>
> Provided that before making assessment under this rules, the assessing authority shall obtained the concurrence of the Deputy Commissioner having jurisdiction if the assessment results in imposition of tax of one lakh rupees and above or enhancement of tax due to the extent of one lakh of rupees over and above the tax due as reported in the returns.
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> Rule 11: If no return is submitted by the dealer as required by rule 9 or if the return submitted by him appears to the assessing authority to be incorrect or incomplete the assessing authority shall, after making such enquiry as he considers necessary determine the turnover of the dealer to the best of his judgment, and [provisionally determine the annual tax or taxes] payable at the rate or taxes

payable at the rate or rates specified in 1 [section 3, 3-A, 3-B,,3-D,3-E,3-G,3-H,3-I,3-J,4,4-F,,7-C or 7-E or notified under section 17.

Rule 12. Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, before taking action under rule 11, issue a notice to the dealer calling upon him to produce his accounts, registers, records and other documents and prove the correctness and completeness of his return a time and place to be specified in the notice. If no return is submitted by a dealer, the assessing authority, before taking action under rule 11, shall issue a notice to the dealer and make such enquiry as he considers necessary.

11. However, before the procedure contemplated under Rules 11 and 12 of the TNGST Rules, 1959 could be completed, the TNGST Act, 1959 came to be repealed and substituted with T.N. VAT Act, 2006. There is not only saving of the proceedings initiated but also a right to proceed further in respect of tax demands due under TNGST Act, 1959 as if the said Act had been in force all along prior to 1.1.2007 under Section 88(3) of T.N. VAT Act.

12. Under the new enactment, there is no procedure for getting concurrence of the Jurisdictional Deputy Commissioner. Therefore, the impugned notices are to be deemed to have been issued under Section 88(3)(b) of the T.N. VAT Act, 2006 and continued.

13. Therefore, I do not find any merits in the present writ petitions. Accordingly, these writ petitions are liable to be dismissed. Further, having opted to participate in the adjudicatory machanism under the T.N. VAT Act, 2006 by seeking time, the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

14. The petitioner may therefore file its reply to the respective impugned notices within a period of 30 days from the date of receipt of this order with the respondent. The 1st respondent or any other officer designated under the new regime after the implementation of the T.N.VAT Act 2017, may proceed to pass appropriate orders in accordance with law after considering all the objections of the petitioner including the one relating to the jurisdiction. All the issues are left open to be decided

and it is for the petitioner to file an appropriate reply to the respective impugned notices.

15. The writ petitions stand disposed of with the above directions. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lbm

To

1.The Commercial Tax Officer,
Avanashi.

2.The Assistant Commissioner (CT),
Coimbatore.

+1cc to Mr.V. Sundareswaran, Advocate sr.104152
+1cc to Special Government Pleader (Taxes) sr.104983

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nrl(co)
nr 13/02/2020