IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.7805 of 2012
M.P.No.2 of 2012

M/s.A.Paramasivan & Co.,
rep by it proprietor
No.3, Kurinji Naaga III Street
Tirupur-4 .. Petitioner

Vs

1.The Special Committee under
Sec.16-D of the Tamil Nadu
General Sales tax Act, 1959
Ezhilagarm, Chennai-600005
2.The Commercial Tax Officer (FAC)
Bazaar Circle,
Tirupur ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records of the first respondent in it proceedings in SCP NO.13/2012-Ref.No.M1/35582/2011, quash the order dated 12.01.2012 issued therein and further direct the second respondent to issue summons under Sec.54 of the TNGST Act to whom the petitioner had effected sales of cotton during the assessmen years TNGST 2002-03 and 2003-04 conduct an enquiry and thereafter pass fresh assessment orders for the assessment years TNGST 2002-03 and 2003-04.

For Petitioner : Mr.B.Raveendran
For Respondents : Mrs.Dhana Madhri, GA

O R D E R

The petitioner herein had earlier challenged the order of assessment for the assessment year 2002-03 and 2003-04 in Writ Petition Nos. 37056 and 37057 of 2007. This Court, by order dated 14.12.2007, had dismissed the writ petition. The appeals against the same, in W.A.Nos.1675 & 1676 of 2009, was also dismissed on 24.11.2009. Thereafter, the petitioner had filed an application under Section 16D of the TNGST Act on 28.12.2010, which also came to be rejected on 12.01.2012, which is impugned in the present writ petition.

2. One of the primary contention raised by the petitioner before the Assessing Officer in application 16D is that the Assessing Officer should issue summons to the buyers in order to substantiate the transactions, which came to be rejected stating that, when the petitioner had earlier filed a writ petition in W.P.Nos.38577 to 38579 of 2004, as against the pre-assessment notices, for the same assessment years, he had undertaken to produce the witnesses before the Assessing Officer and therefore, he cannot now call upon the Assessing Officer to issue summons.

3. The learned Government Advocate, on the other hand, would oppose the submissions stating that the application under Section 16D itself has been filed as to delay the proceedings thereby evade payment of the tax. According to the learned Government Advocate, pre-assessment notices were issued for the assessment years 2002-03 and 2003-04, the petitioner had chosen to challenge the same in which writ petition he given undertaking to produce the witnesses, who he may claim to be their vendors. Due opportunity was given to the petitioner during the course of assessment proceedings and subsequently the assessment orders came to be passed on 28.09.2007 and 19.10.2007 respectively.

4. The learned counsel for the petitioner would submit that under Section 54 of the TNGST Act, the powers to summon witnesses and compel production of any document is vested with the Assessing Officer and as such, the Assessing Officer was not justified in refusing to issue summons to the witnesses. He would also rely upon an order passed in WP.No.35399 of 2006 dated 24.01.2015 in connection with M/s.Elango Textiles Vs. The Deputy Commercial Tax Officer, which has also another business dealing with the same commodity at the same premises, wherein, this Court had quashed their assessment order and directed the Assessing Officer to issue summons to the third party dealers for the purpose of cross-examination. In view of the order passed by this Court in WP.No.35399 of 06, the learned counsel would submit that the said direction to the respondents, to issue summons, may be considered in the present writ petition also.

5. The learned Government Advocate objected stating that the petitioner had earlier challenged the assessment orders in WP.Nos.37056 & 37057 of 2007 and the writ petition came to be dismissed on 14.12.2007. The petitioner had challenged the orders of the writ petition through Writ Appeal Nos.1675 and 1676 of 2009, which were also dismissed on 24.11.2009. The present application under Section 16D is yet another attempt by the petitioner to evade his tax liability and in view of the undertaking given by the petitioner in before this Court in the writ petition, there was no infirmity in the orders of the Assessing Officer in rejecting such a claim.

6. I have given careful consideration to the averments made by the respective counsels.

7. It is not in dispute that when the petitioner had chosen to challenge the pre-assessment notices for the assessment years 2002-03 and 2003-04, the writ petitions came to be disposed, recording the undertaking of the petitioner that he would produce the witnesses and necessary documents before the Assessing Officer. The relevant portion of the order dated 27.12.2004 in W.P.Nos.38577 to 38579 of 2004 reads as follows:

> 4. The learned counsel for the petitioners submits that the respondents issued the impugned notices based on certain documents in their custody. The learned counsel for the respondents submits that the alleged purchase by the petitioners from their vendors, who are all non other than bogus and non-existing persons. But the learned counsel for the petitioners undertakes to produce such persons and necessary documents in support of his contention before the first respondents, provided the first respondent furnishes the copy of the documents seized and the respondent counsel undertakes to furnish copies within one week from today.
>
> 5. In view of the above, I permit the petitioners to file their objections within a period of four weeks from today and also produce witnesses viz., the vendors and relevant documents before the first respondent within a period of four weeks thereafter. On production of such documents, objections and examination of witnesses, the authorities shall consider and pass orders in accordance with law.
>
> 6. These writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous W.P.M.P are closed.

8. The above observation of this Court are self-explanatory. It is in view of this undertaking given by the petitioner to produce such persons, who he claims to be his vendors as well as the undertaking to produce the necessary documents that the writ petition challenging the pre-assessment notices came to be disposed of. When such an undertaking has been given before this Court in a writ petition, reliance on Section 54 of the TNGST Act may not be appropriate. It is pertinent to mention here that even under Section 54 of the TNGST Act, the powers to summons witnesses and compel production of the documents are provided for to the Assessing Officer and that the provisions does not say that when an undertaking has been given before this High Court, the Commissioner is still bound to issue summons seeking for production of the witnesses as well as documents.

9. As such, the request made by the petitioner before the Assessing Officer for issuance of summons to the buyers to substantiate his transactions is baseless. I find that there was a duty cast on the petitioner to produce the witnesses as well as the other documents to substantiate his contentions in view of the undertaking given before this Court in WP.Nos.38577 to 38579 of 2004 and as such, there is no infirmity in the findings of the Assessing Officer in his order passed in the application u/S.16D of the TNGST Act.

10. In so far as the second contention of the petitioner that this Court had entertained a writ petition filed by M/s.Elango Textiles (supra) and allowed the same by directing the Assessing Officer to issue summons, is concerned, it is seen that the assessment orders have been challenged in the said writ petition, whereas, in the instant case, the petitioner had earlier challenged the pre-assessment notices, assessments orders through writ petitions through writ appeals, which came to be dismissed. The option to seek for liberty to cross-examine the witnesses was already available when the assessment order was originally challenged. The issue in the application filed under Section 16D of the TNGST Act and the ground raised in the earlier petition are pre-dominantly one and the same. While that being so, the present writ petition on the same grounds and plea for an opportunity for cross-examination does not require consideration.

11. One of the main grounds raised by the Government Advocate is that the petitioner has been trying to evade the payment of tax through a series of litigation. The present order, impugned in the writ petition, is to the rejection of the application under Section 16D of the Act. As such, when the petitioner had already challenged the assessment orders and failed, the reliance on the order of this Court with regard to another dealer operating from same premises, in which the assessment order was challenged for the first time, cannot be equated to the petitioner on the facts of the case. As pointed out by the learned Government Advocate, the present writ petition is the third round of litigation and the assessment orders, which came to be passed in the year 2007, has still been kept pending through various writ petitions and writ appeals. The petitioner, who has not availed the effective remedy of an appeal, has chosen to make an application under Section 16D of the TNGST Act, which itself evidences that this could be dilatory tactics adopted for evasion of payment of his tax liability.

12. For all the forgoing reasons, I am not inclined to interfere with the impugned order of the first respondent. Hence, this writ petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ska
To

1.The Special Committee under
Sec.16-D of the Tamil Nadu
General Sales tax Act, 1959
Ezhilagarm, Chennai-600005

2.The Commercial Tax Officer (FAC)
Bazaar Circle,
Tirupur

+1 cc to Spl Government Pleader Sr.No. 63955
+1cc to Mr.B.Raveendran , Advocate SR.No. 63523

W.P.No.7805 of 2012
M.P.No.2 of 2012

rsi
A.SK(09/09/2019)