IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26.06.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.Nos.17485, 17490, 17493 & 17497 of 2019
and W.M.P.Nos.16961, 16967, 16973 & 16974 of 2019

M/s.M.G.S.Agro Bio Fuels
Rep.by the Authorized Signatory .. Petitioner in all W.Ps.

vs.

Assistant Commissioner (ST)
Tiruvannamalai-II Assessment Circle
Tiruvannamalai District. .. Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent and quash the proceedings in TIN 33524661771/2013-14, TIN 33524661771/2014-15, TIN 33524661771/2015-16 and TIN 33524661771/2016-17 dated 10.08.2018, 10.08.2018, 07.09.2018 and 07.09.2018 respectively as illegal and against principles of natural justice and direct the respondent to pass fresh orders after providing an opportunity of personal hearing to the petitioner and pass such other order or orders as the Hon'ble Court may deem fit and appropriate in the circumstances of the case and thus render justice.

For Petitioner : Mr.C.Baktha Siromoni
(In all W.Ps)
For Respondent : Mr.V.Haribabu,
(In all W.Ps) Additional Government Pleader

COMMON ORDER

This common order will govern these four writ petitions. In other words, this common order will dispose of these four writ petitions.

2. Mr.C.Baktha Siromoni, learned counsel on record for writ petitioner in all these four writ petitions is before

this Court. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity), who shall hereinafter be referred to as 'Revenue Counsel' accepted notice on behalf of lone official respondent.

3. With consent of learned counsel on both sides, main writ petitions itself are taken up, heard out and are being disposed of.

4. These four writ petitions pertain to Assessment Years 2013-14 to 2016-17.

5. This Court is informed that the central them / core issue in all these four writ petitions is the same and only the Assessment Years are different. Obviously, the numerical values are different. To be noted, instant writ petitions arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' ('TNVAT Act' for brevity).

6. It is submitted that writ petitioner is a registered dealer under TNVAT Act on the file of respondent, monthly returns are being filed inter alia under Section 21 of TNVAT Act and there has been deemed assessment under Section 22 (2) of TNVAT Act.

7. It is further submitted that under the aforesaid circumstances, Enforcement Wing Officials inspected the business premises of writ petitioner, certain discrepancies were noted and proposal was given by Enforcement Wing Officials, pursuant to which, Revised Assessment Orders were passed. These Revised Assessment Orders were assailed by writ petitioner in W.P.Nos.32136 to 32138 of 2017, which came to be disposed of by this Court vide order dated 12.02.2017 and operative portion of the said order is contained in paragraph 4, which reads as follows:

> '4. Accordingly, the writ petitions are disposed of by directing the petitioner to pay 15% of the tax as computed by the respondent for each of the assessment years, i.e, 2013-14, 2015-16 and 2016-17 and if such payment is made within a period of eight weeks from the date of receipt of a copy of this order, the petitioner will be entitled to treat the assessment orders for the respective years as show cause notice and submit their objections within a period of fiteen days therefrom. On receipt of the objections, the respondent is directed to afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. It is needless to add that the benefit of this order will not enure

to the petitioner if the petitioner fails to comply with the condition of payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, connected miscellaneous petitions are closed.'

8. It is submitted by writ petitioner that pursuant to the aforesaid order, 15% of the tax computed has been paid. To be noted, aforesaid writ petitions pertain to three Assessment Years viz., 2013-14, 2015-16 and 2016-17. It is submitted that in the instant four writ petitions, Assessment Order 2014-15 also is included. To be noted, Assessment Order 2014-15 is not covered by the aforesaid order.

9. Be that as it may, post aforesaid order, Revised Assessment Orders came to be passed inter alia under Section 27 of TNVAT Act and these Revised Assessment Orders have been called in question in the instant four writ petitions.

10. Though Revised Assessment orders have been called in question and though several grounds have been raised in the affidavits filed in support of the writ petitions, in the hearing today, learned counsel for writ petitioner abridged the submissions and submitted that writ petitioner now intends to pursue statutory appeal remedy under Section 51 of TNVAT Act. For writ petitioner to pursue statutory appeal remedy under Section 51 of TNVAT Act, leave of this Court is not required. Writ petitioner could have filed statutory appeals directly before the Appellate Authority.

11. However, having filed the instant writ petitions, learned counsel seeks permission to file appeals under Section 51 of TNVAT Act to the Appellate Authority concerned.

12. As per Section 51(1) of TNVAT Act and the proviso there to an appeal has to be filed within 30 days from the date on which the order was served on writ petitioner and there can be condonation of delay upto a further period of 30 days. In other words, there is a cap of 30 days with regard to condonation of delay.

13. In this regard, learned counsel for writ petitioner is not in a position to readily give the exact date on which the impugned orders were served on writ petitioner. Therefore, the question of condonation of delay, if any, subject to Section 51(1) and proviso thereto should also be decided only by the Appellate Authority.

14. These writ petitions are therefore, disposed of recording the submission that writ petitioner would be preferring statutory appeals under Section 51 of TNVAT Act. While preferring statutory appeals, if writ petitioner seeks condonation of delay, such application for condonation of delay shall be dealt with on their own merits by the Appellate Authority subject to Section 51(1) of TNVAT Act and proviso thereto. Though obvious it is made clear that examination of appeal will arise only if the appeal is filed within time or if delay is condoned by the Appellate Authority as the case may be.

15. These four writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm
To
Assistant Commissioner (ST)
Tiruvannamalai-II Assessment Circle
Tiruvannamalai District.

Copy to
The Section Officer,
ER Section,
High Court,Madras

+1 cc to Spl Government Pleader Sr.No. 53630

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A.SK(07/08/2019)
A.SK(30/08/2019)