IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.19251 of 2019
and
W.M.P.Nos.18685, 18689, 18692 & 18694 of 2019

Tvl.Surabhi Granites
Represented by its Partner
223, Thadagam Main Road
Opp. JM Hospital, KNG Pudur
Coimbatore - 641 025. .. Petitioner

Vs.

The Assistant Commissioner (CT)
Velandipalayam Assessment Circle
Coimbatore. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, quashing the impugned order passed by the respondent in TIN 33066204809/2014-15 dated 05.06.2017 and the consequential notice in TIN 33066204809/2014-15 dated 15.04.2019 and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case and thus render justice.

For Petitioner : Ms.D.Naveena

For Respondent: Ms.G.Dhanamadhri,
Government Advocate.

ORDER

Ms.D.Naveena, learned counsel on record for sole writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of lone official respondent.

2. With consent of learned counsel on both sides, main writ petition itself is taken up and is being disposed of.

3. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' ('TNVAT Act' for brevity).

4. An 'order dated 05.06.2017 bearing Reference TIN 33066204809/2014-15' (hereinafter referred to 'impugned order-I' for brevity) has been called in question in the instant writ petition. To be noted, impugned order-I is a revised assessment order under TNVAT Act. Impugned order-I was made more than two years ago and impugned order-I was admittedly served on writ petitioner more than two years ago.

5. The case file placed before this Court reveals that instant writ petition has been presented in this Court on 01.07.2019. Therefore, impugned order-I made and served on writ petitioner in June of 2017 has been assailed in the instant writ petition, which has been filed more than two years later i.e., in July of 2019 i.e., 01.07.2019 to be precise.

6. Short facts shorn of elaboration are to the effect that writ petitioner is a dealer within the meaning of TNVAT Act, writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. Subject matter of instant writ petition pertains to 'Assessment Year 2014-15' (hereinafter 'said AY' for brevity).

7. Learned counsel for writ petitioner assailed the impugned order-I on two main grounds and they are as follows:

a) Objections given by writ petitioner being objections to the revisional notice have not been properly considered. To be precise, documents annexed to reply to the revisional notice have not been considered.

b) Opportunity of personal hearing has not been given to writ petitioner before passing the impugned order-I.

8. Elaborating on the aforesaid first point, learned counsel for writ petitioner submitted that a pre-revision notice being notice dated 19.09.2016 for said AY was issued, writ petitioner has sent a reply dated 12.10.2016 and a perusal of the reply would demonstrate that certain documents have been filed. It is also pointed out that thereafter, another pre-revision notice being pre-revision notice dated 02.12.2016 was issued for AY 2014-15, after which there is acknowledgement for documents and a reply on 30.12.2016, but the documents have not been considered.

9. With regard to the second point, it was submitted that personal hearing ought to have been granted before passing of the impugned order.

10. In support of contentions of learned counsel for writ petitioner, an order dated 12.06.2019 made by this Court in W.P.Nos.4554 of 2019 etc., in Venkateswara Constructions Vs. The State of Tamil Nadu and an earlier order dated 08.12.2014 made by this Court in W.P.No.31794 of 2014 in Dharani Sugars and Chemicals Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle were pressed into service.

11. Learned Revenue counsel, in response to the submissions made by learned counsel for writ petitioner, pointed out that the aforesaid case laws do not come to the aid of the writ petitioner primarily because of laches on the part of the writ petitioner. Writ petitioner has filed the instant writ petition, (as alluded to supra) more than two years after impugned order-I was made and served on the writ petitioner. It was pointed out that a distraint notice for recovery was issued, that distraint notice is dated 15.04.2019 and only after the distraint notice was served on the writ petitioner, writ petitioner has woken up from slumber and filed the instant writ petition with the intention of delaying the recovery proceedings. To be noted, the 'distraint notice', which is nothing but a consequence of the impugned order-I has also been called in question in the instant writ petition and therefore, the same shall be referred to as 'impugned order-II' for the sake of convenience and clarity.

12. This Court now embarks upon the exercise of considering the grounds raised by the learned counsel for writ petitioner.

13. With regard to the Venkateswara Construction case, this Court had passed to that order based on SRC Projects principle being the principle in SRC Projects Pvt Ltd. Vs. Commissioner of Commercial Taxes, Chennai and another reported in (2010) 33 VST 333 (Mad).

14. It was pointed out by learned counsel for Revenue that VenKateswara Construction case is clearly distinguishable on facts for more than one reason. It was submitted that Venkateswara Construction case is one where, the issue of tax deduction at source was involved and that was a case where the writ petitioner specifically sought for personal hearing, but the same was not granted. This Court is inclined to accept the submission as a case law is on the facts and circumstances of that particular case and in the light of issue being production of certificates pertaining to tax deduction at source and in the

light of there not having been latches on the part of the writ petitioner in approaching this Court, the order was passed that too fixing personal hearing on a mutually agreeable date and time. Likewise, a perusal of the Dharani Sugars case also reveals that it is a case where the Assessing Officer in the impugned order has referred to objections made by writ petitioner, wherein it has been stated that they have not effected any export, but proceeded to pass the order on the basis that there were exports. It is in this context that SRC Projects principle was applied by another Hon'ble Judge in Dharani Sugars case.

15. Therefore, this Court is inclined to accept the submission of learned Revenue Counsel that Dharani Sugars case also is distinguishable on facts.

16. To be noted, in Dharani Sugar case, there is nothing to show that there was delay or laches on the part of the writ petitioner.

17. With regard to principles in these case laws, this Court reminds itself of the time honoured principle laid down by Hon'ble Supreme Court in Padma Sundara Rao Vs. State of Tamil Nadu reported in (2002) 3 SCC 533. Most relevant paragraph is paragraph 9 and the same reads as follows:

> '9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

18. Therefore, an order is rendered on the facts and circumstances of that particular case. Now that the aforesaid case laws are distinguishable, it is also necessary to make a reference to the alternate remedy aspect to the matter.

19. In the instant case, the impugned order itself makes it clear that an appeal lies to the jurisdictional Deputy Commissioner within 30 days from the date of receipt of a copy

of the order, but writ petitioner has not chosen to file a statutory appeal.

20. There is no disputation before this Court that a statutory appeal lies to jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act.

21. As rightly pointed out by learned counsel for Revenue, writ petitioner has gone into slumber after service of impugned order in the writ petition and has woken up only after the distraint notice was served on the writ petitioner on 15.04.2019 and has chosen to come to this Court on 1st July 2019 with the instant writ petition.

22. There is no explanation whatsoever as to why the writ petitioner did not choose either to come to this Court or prefer a statutory appeal immediately after the receipt of the impugned order. It is now too late in the day to assail the impugned order.

23. Notwithstanding this position, in the instant case, objections have been considered and the Assessing Officer has returned findings on the same. Submissions before this Court are in the nature of either not appreciating all the documents filed along with the objections or not considering some of the documents not filed along with the objections. Therefore, these can at best qualify as grounds of appeal in a statutory appeal. Writ petitioner has missed the bus and filed the writ petition at such a belated point of time and this Court does not find any exceptional situation to interfere in this setting in the instant case.

24. Owing to all that have been set out supra, writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner (CT)
Velandipalayam Assessment Circle
Coimbatore.

+1cc to M/s.S.Durairaj, Advoate Sr.56303
+1cc to the Special Government Pleader Sr.57134

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W.M.P.Nos.18685, 18689,
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