IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

Review Application No.149 of 2019
in
W.P.No.6385 of 2017

Tvl.Chemech Laboratories Limited,
Represented by its Managing Director,
Dr.Rajan Jaishankar,
No.4, Kodambakkam High Road,
Chennai - 600 034. ... Petitioner

Vs

1. The Appellant Assistant Commissioner (CT) VII,
   Kuralagam Annex, Chennai - 600 108.

2. The Deputy Commercial Tax Officer,
   T.Nagar (East) Assessment Circle,
   Taluk Office Buildings,
   No.46, Greenways Road,
   Chennai - 600 028. ... Respondents

PRAYER: Review Petition filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to set aside the order dated 14.06.2019 passed in W.P.No.6385 of 2007.

For Petitioner : Mr.Soundara Rajan K.

For Respondents : M/s.G.Dhan Madhri
Government Advocate (Taxes)

ORDER

This review petition is directed as against the order dated 14.06.2019 passed by this court in W.P.No.6385 of 2007.

2.The petitioner's company is a Public Limited Company incorporated under the Companies Act, 1956 during the year 1980. The main business of the petitioner's company is the manufacture of drugs and blood products, Plasma, Protein Fractions and other items. In the year 1988, the Government had banned the manufacture of blood products and directed the company to destroy all the stocks held. The petitioner, therefore, became sick company and the same was referred to the Board for Industrial and Financial Reconstruction for rehabilitation during the year 1991. The bank of India was appointed as operating agency. According to the pre assessment notice in TNGST:187701/1992-93 issued by the Deputy Commercial Tax Officer, dated 03.10.1997 in which the petitioner had proposed to estimate the turnover by adding 50% of the turnover to revise the assessment in the year 1992-1993. The second respondent also proposed the penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax (hereinafter referred to as the (TNGST) Act. The assessment order was passed by the Government of Tamil Nadu, dated 27.11.1997 including the penalty under Section 12(3)(b) of the Act and the same was dismissed against the rectification order was passed before the Assessment (CT) VII and the appeal was dismissed. The petitioner, thereafter, filed a petition before the Special Committee under Section 16-D of the TNGST Act, 1959. The committee has refused to entertain the petition on the ground that the petitioner had preferred an appeal and proceedings of the Special Committee under Section 16-D of the TNGST Act, 1959. It is not permitted the Special Committee of the TNGST Act, to entertain the petition. The Special Committee rejected the application under Section 22 by order dated 19.10.2005. After the committee rejected the application 16-D of the TNGST Act. After dismissing the application under Section TNGST Act. The petitioner has sought to challenge the order of the Appellate Authority by filing this writ petition.

3.This Court has dismissed the writ petition by the impugned order dated 14.06.2009 primarily on the ground of laches stating that the order of the appellate order could not have been challenged after a gap of six long years. By filing this writ petition, this Court found that no reason has been given by the petitioner to persuade this Court to entertain this writ petition after a gap of six years. Against this order, the review petition has been filed.

4.The petitioner has raised the following grounds:

> 1.The Review Petitioner had explained about the delay in approaching this Hon'ble Court against the orders of the 1st respondent since the Authorised Representative who has filed the Appeal before the first respondent expired during the year 2000 and, thereafter, the first respondent without intimating any notice to the petitioner, had disposed the Appeal in the absence of the Authorised Representative or the petitioner and the said order was also not communicated to the petitioner. Only when the demand was made by the second respondent, the petitioner came to know about the order passed by the first respondent and filed the Writ Petition immediately since the order has been passed exparte without serving any notice to the petitioner. Therefore, there is no latches on the part of the petitioner.
>
> 2.The Review Petitioner further submitted that

the Assessment has been made without verifying the books of accounts in view of the various problems faced by them and in respect of the other years 1994-1995 and 1995-1996 under the TNGST Act and in respect of the years 1992-1993 and 1995-1996 under the CST Act, similar best judgment assessments were passed by the second respondent since the account books were not produced before him, which was set aside by the Committee, after accepting the books produced before it.

3.The review petitioner further submitted that the assessment year is 1992-1993 under the TNGST Act, for which the books were not produced before the second respondent and, therefore, best judgment assessment was made whereas in respect of the best judgment assessment made under the CST Act, books were produced before the Committee which consists of the accounts before the Committee which consists of the accounts for both TNGST and CST Acts and on that basis, the best judgment assessment under the CST Act, was set aside by the Committee. Therefore, the books were available and also produced before the Committee and the best judgment assessments were set aside. Since the Appeal has been filed for t the assessment under the TNGST Act, the Committee was not in a position to interfere with the best judgment assessment made under the TNGST Act even though the books were produced before the Committee.

4.The review petitioner submits that even the

> Appellate Authorities under the Act could only set aside the best judgment assessments and remand the Appeals to the Assessing Officers for verifying the books of accounts. Therefore, no prejudice would be caused to the respondents, if the order has been set aside and one more opportunity is granted to verify the books of accounts.
>
> 5.The review petitioner submits that the writ petition has been admitted and interim order has also been granted during the year 2007 and the same was in force all along.

5.Though, none of the grounds are available to the petitioner in a review petition, yet, this Court decided to hear on merits for the simple reason that the case was argued by the learned junior of the Advocate on Record and this court decided to hear Mr.K.Soundararajan, Advocate on the merits of the writ petition. This Court must put on record, the objections raised by the learned counsel for the revenue, but the Court was inclined to hear the case on merits in the interest of justice.

6. The learned counsel for the petitioner states that sufficient reasons had been given in the writ petition, as to why, the petitioner could not produce the books of accounts and that his clients were

unaware of the order of the Appellate Court in para Nos.6 and 7 of the writ petition reads as under:

> 6.I submit that the petitioner company strives hard to lift the company and completely forget about the appeal filed before the first respondent. I submit that the staff who had entrusted the papers with the Authorised Representative also left the petitioner company and therefore, no one as available to follow up who had filed the appeal also passed away during the year 2000 and therefore, the appeal was totally unattended by the petitioner as well as by the Authorised Representative. In fact, the persons available as on date do not even know about the filing of the appeal and to whom the same has been entrusted. Because of the various problems, the petitioner company also shifted their office twice and because o that the petitioner has also not received any communication from the first respondent informing the date of final hearing.
>
> 7. I submit that in view of the above said facts, none appeared before the first respondent at the time of hearing and therefore, the first respondent had confirmed the order of the second respondent by dismissing the appeal filed before him in A.P.No.581

of 1999 dated 03.10.2001. I submit that the appeal order was also not received by the petitioner till dated. I submit that in this circumstances, the petitioner moved the second respondent, without knowing about the appeal filed before the first respondent, with a petition under Section 55 of the TNGST Act, to rectify the assessment order on 18.02.2003. I submit that the second respondent had rejected the petitioner's application by stating that the petition cannot be entertained in view of the appeal order passed by the first respondent in A.P.No.581 of 1999 dated 03.10.2001. I submit that in this circumstances only the petitioner came to know about the appeal order passed by the first respondent and after a serious of efforts the petitioner came to know that the appeal was filed as early as December 1997 through the Authorised Representative Mr.Basyam, who was also passed away during the year 2000 and the appeal was also dismissed for non-prosecution. I submit that till date neither the petitioner nor the Authorised Representative had received the orders of the first respondent. I submit that only because of the recovery proceedings the petitioner came to know about the appeal order and able to get only a xerox copy of the order. I submit that only after that, the petitioner verified and found that no records relating to the appeal is available with the petitioner company.

7.The learned counsel for the petitioner therefore submitted that the writ petitioner had sufficient grounds as to why the books of accounts were not presented before the Appellate Authority. It was also stated that the petitioner did not know that the appeal had been dismissed on 03.10.2001 and he came to know about his dismissal only when he received the notice. It is contended that the authorised representative passed away and therefore, the petitioner was not unaware of any development. This Court while dismissing the writ petition in paragraph No.10. Observed as under:

> 10.Perused the materials on record. The petitioner has not substantiated his case that due to the lock out, the petitioner was not in a position to produce the books of accounts. He has not shown as to how he was not permitted to produce the books of accounts. A lockout *ipso facto* not create the situation that the books of accounts could not be brought out. No evidence of any law and order problems has been shown which would substantiate the case of the petitioner. The petitioner was prevented even to access the factory premises where the books of accounts were kept. There was a lock out and therefore, the petitioner is restrained by them cannot be accepted on the mere statement. Appeal has already been dismissed on the reason that the books of accounts has not been filed. The alternative remedy available to the petitioner. The petitioner has approached the Special Committee under Section 16(D). Obviously the order of appeal would have been produced before the Special

> Committee under Section 16(D) of the TNGST Act. At that time, the petitioner could have been approached the Tribunal, the Writ Petition has been filed only because the period of limitation to fie the revision has been last by the petitioner.

8. All the contentions raised by the petitioner in the review has been dealt with in the writ petition. The contention of the petitioner that the petitioner and its authorised representative had passed away and the Company did not know about the dismissal of the appeal cannot be accepted. The Company ought to have been vigilant in pursuing its remedy. The company cannot plead helplessness of being unaware about the proceedings in the appeal. Further, as observed in the impugned order, lock out cannot be a reason as to why books of accounts were not produced before the Appellate Authority. Lock out does not mean that the officials of the company could not get the books of accounts from the company. Nothing has been brought on record to show that they were prevented from getting the books of accounts.

9.In view of the above, we do not find any error apparent on the face of the record warranting interference with the impugned order.

10.Accordingly, the Review Petition is dismissed.

30.08.2019

msm / pkn
Index : Yes/No
Speaking order/non-speaking order

To

1. The Appellant Assistant Commissioner (CT) VII,
   Kuralagam Annex,
   Chennai - 600 108.

2. The Deputy Commercial Tax Officer,
   T.Nagar (East) Assessment Circle,
   Taluk Office Buildings,
   No.46, Greenways Road,
   Chennai - 600 028.

SUBRAMONIUM PRASAD, J.

msm/pkn.

Rev.Appln.No.149 of 2019
in
W.P.No.6385 of 2017

30.08.2019