IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.23802 OF 2019
AND
WMP NO.23668 OF 2019

Max Electricks
Represented by its Proprietor
G.Vijayakumar.
... Petitioner

vs.

1. The Assistant Commissioner (ST)
   Peelamedu (South) Circle
   Coimbatore.

2. The Appellate Authority
   Deputy Commissioner (ST)
   (Addl), Coimbatore.

3. The Joint Comissioner (ST)
   Coimbatore Division
   Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the third respondent herein in Ref. No.2604/2012/C1 dated 04.04.2019 to quash the same and direct the third respondent herein to consider their application dated 29.03.2012 (30.03.2012) in accordance with Section 8 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011 or pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.K.Narayanan for
Mr.N.Inbarajan

For Respondents: Mr.Mohammed Shaffiq,
Special Government Pleader assisted by
Ms.G.Dhanamadhri,
Government Advocate.

O R D E R

Mr.K.Narayanan, learned counsel representing the counsel on record for writ petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader who accepts notice on behalf of all the three respondents assisted by Ms.G.Dhanamadhri, learned Government Advocate are before this Court.

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

3. FACTUAL MATRIX IN A NUTSHELL:

(a) Writ petitioner is a dealer under 'Tamil Nadu General Sales Tax Act, 1959' (hereinafter 'TNGST Act' for brevity)

b) A revised assessment order, came to be passed by the first respondent against the writ petitioner. This revised assessment order is dated 27.02.2009 and bears Reference No.TNGST No:2100818/05-06. This revised assessment order was made under TNGST Act.

c) Writ petitioner filed a statutory appeal against the aforesaid revised assessment order dated 27.02.2009. Statutory appeal is on the file of the second respondent. Statutory appeal is AP No.1034 of 2009 and it was filed before the second respondent on 20.07.2009.

d) When the aforesaid statutory appeal before the second respondent was pending, an Act which goes by the name 'The Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011' (Act No.29 of 2011), which shall hereinafter be referred to as 'Samadhan Act' came into force on and with effect from 01.11.2011.

e) Samadhan Act provided for expedient settlement of arrears of tax, penalty, interest etc., under TNGST Act.

f) Writ petitioner filed an application before the third respondent under Section 5(1) of Samadhan Act on 29.03.2012.

g) Third respondent sent the aforesaid application of the writ petitioner under Samadhan Act to first respondent to verify the correctness, eligibility and admissibility.

h) When things stood as above, four years later, third respondent passed an 'order dated

04.04.2019, bearing Reference No.2604/2012 C1' (hereinafter 'impugned order' for brevity), rejecting the aforesaid 29.03.2012 application of the writ petitioner under Samadhan Act. Such rejection was on the sole ground that the application of writ petitioner under Samadhan Act is not in conformity with Section 4 of Samadhan Act owing to pendency of aforesaid statutory appeal (filed on 20.07.2009) before the second respondent.

i) Aggrieved by the impugned order, instant writ petition has been filed by writ petitioner.

4. RIVAL SUBMISSIONS:

a) Learned counsel for writ petitioner assailed the impugned order primarily on two grounds and those two grounds are as follows:

(i) Impugned order rejects the application of writ petitioner under Samadhan Act, solely on the basis of Section 4 of Samadhan Act, citing pendency of statutory appeal before the second respondent, but Section 4 of Samadhan Act talks only about pendency of an appeal or a revision before a Court and not before a statutory appellate authority.

(ii) As per proviso to Section 8(2) of Samadhan Act, third respondent ought to have given a reasonable opportunity of showing cause to the writ petitioner before passing the impugned order as the impugned order is an order of refusal qua writ petitioner's application.

b) In response to the above, submissions made by Revenue counsel are as follows:

(i) Writ petitioner ought to have withdrawn the statutory appeal pending before the second respondent even before filing the application on 29.03.2012 under Samadhan Act by invoking Section 5 (1) of Samadhan Act.

(ii) Pendency of an appeal or revision is the criteria and therefore, the impugned order cannot be found fault with for holding that writ petitioner's application is not in conformity with Section 4 of Samadhan Act.

5. DISCUSSION AND DISPOSITIVE REASONING:

a) This Court has carefully considered the rival submissions.

b) After careful consideration of rival submissions, this

Court considers it appropriate to take the second point urged by writ petitioner first.

c) As alluded to supra, the second point urged by writ petitioner is that the third respondent has not given reasonable opportunity to the writ petitioner to show cause against refusal before passing the impugned order.

d) The aforesaid argument was predicated on proviso to Section 8(2) of Samthan Act, which reads as follows:

> '8. Settlement of arrears and issue of certificate.-
>
> (1) .....
>
> (2) The designated authority, for reasons to be recorded in writing, may refuse to settle the arrears of tax, penalty or interest;
>
> Provided that no order under this sub-section shall be passed without giving the applicant a reasonable opportunity of showing cause against such refusal.'

e) A perusal of proviso to Section 8(2) of Samadhan Act makes it clear that it is statutorily imperative that the third respondent gives reasonable opportunity to the writ petitioner for showing cause against refusal before passing the impugned order. There is no disputation or disagreement that this was not done. Therefore, the second point straight away stands answered in favour of the writ petitioner.

f) This itself is the end of the matter and the impugned order is liable to be set aside on this one ground.

g) However, considering the significance of the first point that has been raised, with the objective of making this order as comprehensive as possible, this Court now embarks upon the exercise of considering the first point also.

h) The first point turns on the term 'Court' occurring in Section 4 of Samadhan Act.

i) To put it in simple terms whether the second respondent, who is a statutory appellate authority under TNGST Act (before whom an appeal filed on 20.07.2009 under Section 31 of TNGST Act against a revised assessment order dated 27.02.2009 is pending) will qualify as 'Court' within the meaning of Section 4 of Samadhan Act, is the neat question which falls for consideration.

j) Section 4 of Samadhan Act reads as follows:

> '4. Eligibility for settlement.-:
>
> Subject to the other provisions of this Act,

an applicant may make an application for settlement of arrears of tax, penalty or interest pertaining to the assessment years upto 2006-2007 for which assessment has been made prior to the 1st day of August 2011, against which an appeal or revision is not pending before any Court on the date of filing application'.

(Underlining made by this Court to supply emphasis and to highlight)

k) There is no disputation or disagreement before this Court that the term 'Court' has not been defined either in the Samadhan Act or under TNGST Act. Therefore, one has to look for the definition of 'Court' elsewhere. For this purpose, this Court, referred to Wharton's Law Lexicon, Fifteenth Edition (Year 2009). After perusal of Wharton's Law Lexicon with regard to the term 'Court', this Court found that the following description of 'Court' in Wharton's Law Lexicon is most appropriate and the same reads as follows:

> 'Tribunals functioning under Industrial Disputes Act are not Courts in the strict sense of the term they have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of this Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the 'trappings' of a court and deprive them of arbitrary or absolute discretion and power J & K Iron and Steel Co. V. Iron and Steel Mazdoor Union, (1955) 2 SCR 1315: AIR 1956 SC 231 (235).[Uttar Pradesh State Industrial Tribunal Standing Orders, (1951), Standing Order 22].'

l) This straight away leads us to J.K.Iron and Steel Company Limited case decided by a Larger Bench of Hon'ble Supreme Court and reported in AIR 1956 SC 231 [J.K.Iron and Steel Co. Limited Vs. Iron and Steel Mazdoor Union].

m) J.K.Iron and steel company case was penned by Hon'ble Justice Vivian Bose for the Larger Bench of three Judges. Most relevant paragraph is paragraph 23 and the same reads as follows:

> '23. All the same, wide as their powers are, these Tribunals are not absolute and there are limitations to the ambit of their authority. In Bharat Bank Ltd. v. Employees of Bharat Bank

> Ltd. [(1950) SCR 459, 497] this Court held by a majority that though these Tribunals are not Courts in the strict sense of the term they have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of this Court under Article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the "trappings" of a court and deprive them of arbitrary or absolute discretion and power. There is, in our opinion, an even deeper reason which is hinted at in the judgment of Mahajan, J. (as he then was) at p. 500 where he says that "benevolent despotism is foreign to a democratic Constitution". That, in our opinion, is the heart of the matter. When the Constitution of India converted this country into a great sovereign, democratic, republic, it did not invest it with the mere trappings of democracy and leave it with merely its outward forms of behaviour but invested it with the real thing, the true kernel of which is the ultimate authority of the Courts to restrain all exercise of absolute and arbitrary power, not only by the executive and by officials and lesser tribunals but also by the legislatures and even by Parliament itself. The Constitution established a "Rule of Law" in this land and that carries with it restraints and restrictions that are foreign to despotic power.

n) In the considered view of this Court J.K.Iron and Steel Company case (as in Wharton's Law Lexicon) is instructive and it illumines the answer for the neat question as it comes out clearly that second respondent which is a statutory appellate authority under TNGST Act, does not qualify as a Court. It may have the trappings of the Court, but that by itself does not make it a Court.

o) From the discussion thus far, it emerges clearly that 'Court' has to be a creature of the sovereign and not a creature of the statute. It also comes out clearly that a 'Court' should have discretion which is not in the nature of fettered discretion to perambulate within a predetermined perimeter.

p) In the instant case, second respondent is clearly a statutory appellate authority created under TNGST Act and therefore, does not qualify as a 'Court'.

q) There is one more aspect of the matter. A perusal of Section 10 of Samadhan Act captioned 'withdrawal of appeal and revision' makes it clear that the Samadhan statute in Section 10 talks about appeal or revision pending before the assessing authority or appellate authority or revisional authority.

r) Section 10 of Samanthan Act reads as follows:

'10.Withdrawal of appeal and revision.-

Notwithstanding anything to the contrary contained in any provision in the relevant Act, any proceeding or appeal or revision for any period pending before the assessing authority or appellate authority or revisional authority, as the case may be, under the relevant Act in respect of which a certificate is issued under Section 8, shall be deemed to have been withdrawn from the date of making of the application by the applicant under sub-section (1) of section 5. Any order passed by the assessing authority or appellate authority or revisional authority subsequent to the date of filing of application for settlement of arrears of tax, penalty or interest, resulting in claim for refund of amount paid upto the time of settlement of such arrears of tax, penalty or interest under this Act, will not be taken into consideration.'

(Underlining and double underlining made by this Court to supply emphasis and to highlight)

s) A careful perusal of Sections 4 and 10 of Samadhan Act brings into sharp focus that Samadhan Act has consciously used the terms 'Court' and 'Appellate Authority'. While in Section 4 of Samadhan Act, legislature in its wisdom has thought fit to use the term 'Court', the term 'Appellate Authority' has been used in Section 10. It makes it clear that the two terms have not been used interchangeably or synonymously and that the legislature in its wisdom has clearly understood the terms 'Court' and 'Appellate Authority' as two different and distinct terms qua Samadhan Act. Therefore, there is no difficulty in coming to the conclusion that qua Samadhan Act, second respondent which is an appellate authority i.e., statutory appellate authority under TNGST Act does not qualify as a 'Court' much less as a 'Court' within the meaning of Section 4 of Samadhan Act.

t) The following position emerges clearly :

(a) Terms 'court' and 'appellate authority' are different and distinct;

(b) Aforesaid two terms have not been used simultaneously in the Samadhan Act as Section 4 talks about 'Court' and section 10 talks about 'appellate authority';

(c) It follows as a sequittur from the above that one term cannot be construed as another;

(d) As there is no factual dispute that no matter is pending before a Court (in the case on hand), rejection of Samadhan application by citing section 4 which talks about 'court' (not appellate authority) is clearly untenable.

u) Therefore, it follows as an inevitable and indisputable sequitur that there is no difficulty in accepting the submission of learned counsel for writ petitioner that the impugned order is bad for rejecting the Samadhan application of writ petitioner by refusing the settlement on the sole ground that statutory appeal is pending before the second respondent appellate authority.

v) This Court did have a cursory look at the Revenue impact also. There is no disputation or disagreement that 40% of the tax payable qua the impugned order dated 27.02.2009, which is subject matter of challenge before the appellate authority has been paid. This is only a buttressing aspect of the matter as the legal position alluded to supra is beyond any pale of doubt qua clarity and specificity.

6. CONCLUSION

This Court deems it appropriate to set aside the impugned order of the third respondent and remit the matter back to the third respondent for disposal of writ petitioner's Samadhan application dated 29.03.2012 filed under Section 5(1) of Samadhan Act.

7. DECISION

Impugned order being order dated 04.04.2019, bearing Reference No.2604/2012 C1 made by the third respondent is set aside and the matter is remitted back to the third respondent with a direction to dispose of Samadhan application of writ petitioner dated 29.03.2012 filed inter alia under Section 5(1) of Samadhan Act as expeditiously as possible and in any event within four weeks from the date of receipt of a copy of this order. Though obvious, it is made clear that such disposal will be on its own merits i.e., merits of writ petitioner's Samadhan application and in accordance with law.

Writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Assistant Commissioner (ST)
   Peelamedu (South) Circle
   Coimbatore.

2. The Appellate Authority
   Deputy Commissioner (ST)
   (Addl), Coimbatore.

3. The Joint Comissioner (ST)
   Coimbatore Division
   Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.70582
+1cc to the Special Government Pleader, S.R.No.71563

W.P.No.23802 of 2019
and WMP No.23668 of 2019

RSI(CO)
CS/03/10/2019