IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27881, 27886, 27889 & 27891 of 2019
and
W.M.P.Nos.27447, 27450, 27455 & 27462 of 2019

Tvl.Time Techno Plast Ltd.,
(Formerly known as Time Packaging Ltd.,)
Represented by its authorized Signatory
Door No.145, Sipcot Industrial Complex
Sipcot Phase-I,
Hosur - 635 126. ...Petitioner in all W.P.s

vs.

1. The Joint Commissioner (CT)
No.38/280, Second Agraharam
Opp. Supksha Super Market
Salem Division
Salem - 636 001.

2. The Assistant Commissioner (ST)
Hosur (North)-1. ...Respondents in all W.P.s

Prayer:Writ Petition No.27881 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in proceedings dated 28.11.2013 in Spl. Register, SI.No.227/2011/A11 CST:448276/1996-1997 and quash the same.

Writ Petition No.27886 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in notice dated 03.09.2013 in ROC.1070/2012/A3 CST:448276/1996-1997 and quash the same.

Writ Petition No.27889 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in proceedings dated 28.11.2013 in Spl. Register SI.No.227/2011/A11 and quash the same.

Writ Petition No.27891 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in notice dated 03.09.2013 in ROC.1070/2012/A3 CST:448276/1997-1998 and quash the same.

For Petitioner in all W.P.s :Mr.Adithya Reddy
For Respondents in all W.P.s :Mr.Mohammed Shaffiq
Special Government Pleader (Taxes)

COMMON ORDER

W.P.Nos.27881 & 27889 of 2019 are filed challenging the orders of the first respondent dated 28.11.2013 in rejecting the applications dated 30.04.2012 filed by the petitioner in Form-I under Rule 3 read with Section 5(1) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, seeking to settle their pending tax arrears. W.P.Nos.27886 & 27891 of 2019 are filed challenging the consequent demand notices dated 03.09.2019 issued by the second respondent. The relevant assessment years in all these writ petitions are 1996-1997 and 1997-1998.

2. Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) appearing for the respondents.

3. It is seen that in respect of the subject matter assessment years, the assessment orders were passed under the Central Sales Tax Act, as early as on 29.06.2001. It is seen that the petitioner though has not paid the tax due, has however, chosen to approach the first respondent by filing the applications for settlement of arrears of tax in pursuant to the introduction of Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. Those applications filed by the petitioner were rejected by the first respondent on 28.11.2013 on the reason that the petitioner has paid the tax less than 90%, as required under the relevant provision of the said Act, for the purpose of considering their applications.

4. Consequently, the impugned demand notices were issued in the year 2019 i.e. on 03.09.2019. The grievance of the petitioner before this Court is that the impugned orders of rejection were made not only by ignoring the fact that the petitioner has paid 100% tax as stated in their request for revoking the orders through their applications dated 27.02.2014 and also without providing an opportunity to show cause against such refusal as contemplated under the proviso to Section 8(2) of the said Act.

5. The learned Special Government Pleader for the respondents fairly submitted that the applications filed by the petitioner on 27.02.2014 for revoking the orders dated 28.11.2013 will be considered once again on merits and appropriate orders will be passed and till such time, the impugned demand notices will also be kept in abeyance.

6. It is seen that the petitioner approached the first respondent for settlement of tax arrears by making the applications on 30.04.2012. It is seen that the first respondent rejected the applications on 28.11.2013 on the ground that the petitioner has paid less than 90% of the tax due. On the other hand, it is contended by the petitioner that they have paid 100% of the tax due. Indicating such claim, the petitioner has immediately, on receipt of the impugned orders dated 28.11.2013 filed the applications dated 27.02.2014 to revoke the orders dated 28.11.2013. It is stated that the said applications are still pending and not considered by the first respondent. It is further seen that Section 8(2) of the said Act, specifically contemplates that no order under the said section refusing to settle the arrears of tax, penalty or interest shall be passed without giving the applicant a reasonable opportunity of showing cause against such refusal.

7. Therefore, in my considered view, the first respondent ought to have put the petitioner on notice before passing the impugned orders of rejection. In any event as the learned Special Government Pleader fairly admitted that the applications filed by the petitioner dated 27.02.2014 for revoking the orders dated 28.11.2013 shall be considered afresh on merits and in the meantime, the impugned demand notices will also be kept in abeyance, without expressing any view on the merits of the claim made by the petitioner insofar as the payment of arrears of tax made, these Writ Petitions are disposed of as follows:

(a) The first respondent shall consider the applications dated 27.02.2014 filed by the petitioner for revoking the orders dated 28.11.2013 on merits and pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after giving due opportunity of hearing to the petitioner.

(b) Till an order is passed by the first respondent as stated supra, the impugned demand notices shall be kept in abeyance.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT)
No.38/280, Second Agraharam
Opp. Supksha Super Market
Salem Division
Salem - 636 001.

2. The Assistant Commissioner (ST)
Hosur (North)-1.

+1cc to Mr.Adithya Reddy , Advocate SR.No. 81018
+1 cc to Spl Government Pleader (Taxes)Sr.No. 81492

W.P.Nos.27881, 27886,
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A.SK(22/10/2019)