IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.32602 of 2019
and
W.M.P.Nos.32979 & 32980 of 2019

Tvl.Vijayalakshmi Spinning Mills
(Erstwhile Partnership Firm),
Represented by quoandum Partner
Tmt.D.Kalavathy ... Petitioner

vs.

The Assistant Commissioner (ST),
Gandhi Nagar Assessment Circle,
Tiruppur. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records in TIN 33282385119/2010-11 dated 30.09.2019 on the file of the respondent relating to Assessment Year 2010-11 and quash the same and further direct the respondent not to initiate any action pursuant to the order in TIN 33282385119/2010-11, dated 20.09.2011.

For Petitioner : Mr.M.P.Senthil Kumar
For Respondent : Mr.V.Hari Babu
Additional Government Pleader (T)

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the notice dated 30.09.2019 calling upon the petitioner to pay a sum of Rs.49,85,460/- towards tax, 2% interest per month and a sum of Rs.37,39,095/- towards penalty, being the arrears of sales tax under the Tamil Nadu Value Added Tax Act, relevant to the assessment year 2010-2011.

3. Heard both sides.

4. The case of the petitioner, in short, is as follows:

The petitioner is an erstwhile partnership firm, got registered under the respondent/Department on 02.01.2007 with TIN No.33282385119. However, the partnership firm got converted into a private limited company and accordingly, registration granted in favour of the petitioner was cancelled on 13.12.2007 with effect from the very same day. Therefore, the registration in the name of the private limited firm viz., M/s.Tirupur Vijayalakshmi Spinning Mills (India) Pvt. Ltd., was granted by the respondent/Department on 06.11.2008 with new TIN No.33322390432. Therefore, it is evident that in respect of the assessment year 2010-2011, the petitioner viz., erstwhile partnership firm, did not exist and consequently, the assessment order seems to have been passed in respect of the said assessment year in the name of the petitioner also cannot be sustained. Even otherwise, the said assessment order was not served on the petitioner. Therefore, the present impugned notice cannot be sustained.

5. Even though the present writ petition is filed challenging the impugned notice by raising the above contentions, it is an admitted fact that subsequently, the Assessing Officer issued another notice dated 04.11.2019 calling upon the petitioner to file their objections. In the said notice, the Assessing Officer also informed the petitioner that as the dealer has not submitted relevant particulars within 6 years from the date of receipt of the order, revision under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, could not be considered as it is barred by limitation. Therefore, it is contended by the learned counsel for the petitioner that unless the Assessing Officer is directed to consider all these aspects as raised in this writ petition, the petitioner will be greatly prejudiced.

6. The learned Additional Government Pleader for the respondent fairly submitted that the petitioner has to give a suitable reply to the fresh notice issued on 04.11.2019 and the Assessing Officer will consider the reply and pass appropriate orders.



7. It is specifically contended by the petitioner that during the relevant assessment year, the petitioner did not exist. It is their case that the registration itself was cancelled as early as on 13.12.2007. It is also their case that the assessment order was passed on 20.09.2011 for the assessment year 2010-2011, which was also not served on the petitioner.

8. Under such circumstances, this Court is of the view that the respondent shall consider all these aspects and pass appropriate orders on merits and in accordance with law, after consider the reply to be filed by the petitioner. Therefore, this Writ Petition is disposed of, only by directing the petitioner to file a detailed reply once again to the respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall consider and pass orders on the same on merits and in accordance with law, by treating the proceedings as the one under Section 84 of the TNVAT Act. Such exercise shall be done by the respondent within a period of four weeks thereafter. Till an order is passed by the respondent, the impugned notice shall be kept abeyance. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST),
Gandhi Nagar Assessment Circle,
Tiruppur.

+1cc to Mr.G.Baskar, Advocate, SR.No.96351.
+1cc to SPL Government Pleader SR.No.97782.

W.P.No.32602 of 2019

SR (CO)
CSR(18/12/2019)