IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.02.2019

CORAM :
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.33083 of 2018
and
W.M.P.Nos.38360 of 2018

V.Mohan Govindadas,
Director,
Tvl.Hosur Automotives (P) Ltd.,
No.344, Bangalore Road,
Krishnagiri,
Krishnagiri District. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Krishnagiri Assessment Circle,
Krishnagiri. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent in Na.Ka.686/1998/A3, TNGST.3301288/1995-96/CST:445215 dated 25.10.2018 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.M.Hariharan
Addl. Govt. Pleader (Taxes)

ORDER

The Writ Petitioner seeks issuance of a Writ of Certiorari, calling for the records of the respondent in Na.Ka.686/1998/A3, TNGST.3301288/1995-96/CST:445215 dated 25.10.2018 and quash of the same.

2.The petitioner is a dealer under the provisions of the Tamil Nadu Sales Tax Act, 1959 (in short the 'Act') and challenges a demand notice issued by the respondent calling upon him to remit a sum of Rs.18,92,075/- as arrears of interest and penalty. According to him, there are no pending arrears of Sales Tax or Entry Tax and as such, the demand is contrary to law.

3.The petitioner had approached this Court earlier in W.P.No.20078 of 2018, seeking a Writ of Mandamus, directing this

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very respondent to lift the attachment upon property situated in Union Ward No.9, Old Ward No.17, new present ward 22 of Krishnagiri Municipal Limits in Krishnagiri Bangalore Main Road of Krishnagiri Town. After hearing the parties, this Court passed an order on 03.08.2018 to the following effect:

> "3.The petitioner made a representation to the first respondent to lift the attachment, as the entire arrears of sales tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959 for the assessment year 1995-96 have been settled based on the Samadhan Scheme under the Tamil Nadu Government Sales Tax (Settlement of Arrears) Act, 2011 and a certificate of settlement of arrears dated 16.3.2012 has been issued by the Joint Commissioner (CT), Salem Division, Salem.
>
> 4. The petitioner has stated that the said representation dated 27.6.2018 was refused to be received by the first respondent. Therefore, he met the Joint Commissioner, Salem Division and submitted the representation, which was acknowledged by the office of the Joint Commissioner on 28.6.2018. It is not clear as to why the attachment should still continue when the entire arrears of tax have already been settled in terms of the Tamil Nadu Government Sales Tax (Settlement of Arrears) Act, 2011 and a certificate of settlement of arrears has already been issued. If there are any other dues, then the first respondent should have put the petitioner on notice and separate proceedings should have been initiated. Therefore, the first respondent has to definitely consider the petitioner's representation.
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> 5. In the result, the writ petition is disposed of by directing the first respondent to consider the representation of the petitioner dated 27.6.2018, take note of the certificate of settlement of arrears dated 16.3.2012, afford an opportunity of personal hearing and if there are no other arrears payable under the provisions of the Tamil Nadu General Sales Tax Act, 1959, the attachment of the petitioner's personal property shall be lifted within a period of two weeks therefrom. No costs."

4.It is in response to the petitioner's representation dated 27.06.2018 that impugned order dated 25.10.2018 has been passed, quantifying the demand allegedly payable by the petitioner at Rs.18,92,075/-.

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5. Mr.M.Hariharan, learned Additional Government Pleader has filed a counter denying the averments of the petitioner to the effect that there are no pending arrears. He contends that there are pending arrears pursuant to an Entry Tax assessment made on the petitioner in relation to the assessment year 1995-1996, wherein the tax component was determined at Rs.3,42,061/-, interest at Rs.10,18,959/- and penalties under Sections 15(1) and 15(2) at Rs.6,84,122/- and Rs.1,88,994/- respectively. The petitioner has paid only a sum of Rs.3,02,632/- in regard to the aforesaid demand and thus the remaining amount of Rs.18,92,075/- has been rightly quantified by the respondent as arrears in the impugned order.

6.Heard learned counsel. The petitioner has filed an appeal before the Special Committee constituted under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 to consider its representation dated 27.03.2008, requesting the set aside of the orders of assessment in relation to 1995-1996, 1996-1997 and 1997-1998 under the provisions of TNGST Act and 1995-1996 under the Provisions of Entry Tax Act. By order dated 27.04.2011, all assessments were set aside by the Committee and the matters remanded to the Assessing Officer to pass orders within six weeks.

7. Mr.M.Hariharan, was requested to produce the copies of the orders of assessments passed after the remand by the Special Committee and admits that there have been no orders passed in respect of the entry tax assessment for the period 1995-96. He argues that the Special Committee to begin with, could not have considered a matter relating to Entry Tax at all as its jurisdiction extended only to matters falling within the ambit of the TNGST Act. I am not inclined to accept this argument, for the reason that order dated 27.04.2011 has, admittedly, attained finality. The Commercial Tax Department was duly represented at the hearing before the Committee and their contentions have also been taken into account, while passing order dated 27.04.2011. Having accepted the conclusion of the aforesaid committee, it does not now lie in the mouth of the department to state that the Special Committee could not have considered a matter falling within the compass of the Entry Tax Act. The fact that the petitioner has remitted the tax component also does not advance the case of the respondent.

8. In the facts of this case, as noticed above, particularly for the reason that the Entry Tax assessment relating to the period 1995-96, dated 31.12.1997 has been set aside and no other demand admittedly exists, the petitioners' stand is accepted. The impugned order is quashed and the respondents are directed to lift the attachment on the property within a period of four (4) weeks from the date of receipt of a copy of this order.

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9. Accordingly, this Writ Petition is allowed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sai

To

The Assistant Commissioner (CT),
Krishnagiri Assessment Circle,
Krishnagiri.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.16428
+1cc to the Government Pleader(Taxes), S.R.No.16406

W.P. No.33083 of 2018

KAN(CO)

rrs 27/02/2019

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