BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.5912 to 5915 of 2012 & 5937 to 5939 of 2012

M/s.King Crusher Industries,
Rep. by its Proprietor – R.Muthusamy,
No.17, Ramalingam Street,
Thirukkogaranam,Pudukottai,
Thanjavur District.
... Petitioner in W.P(MD)Nos.5912 to 5915/2012

M/s.Baskaran Crusher,
Rep. by its Proprietor – M.Ravi,
Sivapatti,Sidco (PO),
Kulathur Taluk, Pudukottai.
... Petitioner in W.P(MD)Nos.5937 to 5939/2012

Vs.

1.The Joint Commissioner (CT),
Trichy Division, Trichy.

2.The Deputy Commercial Tax Officer – I,
Pudukottai,
Thanjavur District. ... Respondent in all W.Ps'

Common Prayer in W.P(MD)Nos.5912 to 5915 of 2012: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings in Na.Ka.Nos.18581/2010/A8, 18807/2010/A8, 18848/2010/A8 & 18846/2010/A8, dated 28.10.2011 (for the assessment years 1996-97, 1997-98, 1998-99 and 1999-2000 under the TNGST Act, 1959) quash the same and further direct the first respondent herein to accept the application filed by the petitioner in Form-I (under sub-Section (1) of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008 dated 27.12.2010.

Common Prayer in W.P(MD)Nos.5937 to 5939 of 2012: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings in Na.Ka.Nos.18579/2010/A8, 18853/2010/A8 & 18852/2010/A8, dated 28.10.2011 (for the assessment years 1996-97, 1998-99 and 1999-2000 under the TNGST Act, 1959) quash the same and further direct the first respondent herein to accept the application filed by the petitioner in Form-I (under sub-Section (1) of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008 dated 27.12.2010.

For Petitioner : Mr.S.Karunakar
(in all W.Ps')

For Respondents : Mrs.J.Padmavathy Devi,
(in all W.Ps') Special Government Pleader.

COMMON ORDER

Pursuant to my order dated 24.07.2019, the disputed arrears of interest have been remitted by the petitioners.

2.These Writ Petitions could well be closed recording this position. However, it is a fact that the lis in question arises from proceedings under the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008, which is a scheme for settlement of arrears. The petitioners have challenged orders demanding interest levied upon the amounts computed and offered as settlement by it. The demands have been raised by the Assessing Authority without even a notice, calling upon the petitioners to appear or explaining the methodology of computation adopted. It was only after this Court directed the production of records, that an elaborate exercise of computation and re-conciliation was culled out from the records and furnished to learned counsel for the petitioner. Once convinced, the interest has been paid immediately thereafter by the petitioners.

4.I am of the view that such an exercise ought to have been done in 2011 upon receipt of the Samadhan applications filed by the petitioners. The unilateral issuance of the demand is what has triggered, the present Writ Petitions in the year 2012, that are hanging fire till now. Considerable judicial time has been taken in facilitating this exercise that ought to have been carried out in the office of the Assessing Authority, across the table.

5.A learned Single Judge of this Court has also expressed the same opinion in W.P(MD)No.5638 of 2014 and batch, wherein in the case of M/s.Cheran Cements Limited Vs. the Joint Commissioner and others,(dated 03.09.2014), he states:

> '26.The petitioner submitted applications for settlement under Section 5(1) by enclosing proof of payment of arrears of tax pending collection as per Section 7(c) in respect of TNGST assessments and Section 7(b) in respect of assessments under CST Act. As per the procedure under the Act, the applications should be verified by the designated

authority under Section 6(1), with regard to the correctness of the particulars furnished in the applications filed under Section 5 with reference to all relevant records and it is only thereafter determination of the amount payable at the rates specified in Section 7 could be arrived at. The fundamental error committed by the first respondent is at the time when the applications were scrutinized. It is evident that there is serious procedural flaw in the manner in which the petitioner's applications were considered by the designated authority. Verification of the correctness of the particulars furnished in the applications made under Section 5 shall not mean verification of the contents of the applications alone, but also all relevant records. It could not have been done without issuing notice to the petitioner to produce books of accounts and relevant records.

27.The respondents have not placed any materials to show that the petitioner / applicant was issued such notice to produce records based on which they determined the rate applicable under Section 7. This fundamental error has resulted in the impugned orders. Unless and until the petitioner / applicant satisfies the requirements under Section 6(1), then and then alone the designated authority shall apply sub-Section (2) to Section 6 for determining the further amount payable. In the impugned order, the designated authority took up the applications for scrutiny and stated that the computation made by the petitioner in both TNGST and CST cases was incorrect as they were required to pay not only 40% of the arrears of tax pending collection assessed on best of judgment due to non-production of accounts or non-filing of declaration, but also the arrears of tax admitted in their returns. Therefore, the designated authority, was to consider the applications in the light of the returns filed by the petitioner, orders of assessment, other relevant records etc. Since the assessment itself was on best of judgment basis, the designated authority proceeded to calculate the amount payable at 40 + 7 + and 40 + 10% under TNGST Act and CST Act respectively and by calculating the figure based on the order of assessment stated that the amount paid by the applicant does not fall short of more than 10%, hence the applications cannot be considered.

28.In my view, the issue to be decided at the first instance is whether these applications were verified as per the provisions of Section 6(1). It is only thereafter the question of considering the further amount payable would arise under Section 6 (2). This again is a procedural infirmity, which goes to the root of the matter. The designated authority at the time of verification of the correctness of the particulars in the applications filed by the petitioner, under Section 5(1), is entitled to return the applications for rectification of defects in terms of Rule 3 of the Rules. If this had been done, then the designated authority could have communicated the petitioner / applicant that the rates so determined by the petitioner itself is an erroneous calculation. This could have avoided the entire litigation in the matter. It is true that the statue does not specifically provide for an opportunity of personal hearing or issuance of show-cause notice and the only place where the authority is statutorily bound to issue show-cause notice is while deciding a case and refusing to settle the arrears of tax, penalty or interest under Section 8(2) of the Act. However, there is no statutory prohibition for the designated authority to call for particulars, hear the assessee or scrutiny of the books of accounts etc., while examining the applications under the provisions of Section 6. As notice above, application has to be verified with reference to all relevant records and then only the correctness of determination done under Section 7 could be considered.'

6.The Department should issue necessary and proper guidelines to ensure that Schemes for settlement of arrears are implemented in a manner that would further the spirit and intention of the scheme and not frustrate it. A samadhan scheme is not an adversarial proceeding. Addressing it as one would traditional litigation, defeats the purpose of the scheme, as it has, in the present case. These Writ Petitions are closed with costs of Rs.10,000/- (Rupees Ten Thousand Only) payable from the account of the Commercial Taxes Department to the petitioner within a period of four weeks from today.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

To

1.The Joint Commissioner (CT),
Trichy Division,
Trichy.

2.The Deputy Commercial Tax Officer – I,
Pudukottai,
Thanjavur District.

+1 CC to M/s.R.HEMALATHA, Advocate (SR-80963[F] dated 09/08/2019)

+1 CC to M/s.SPL GP, SR NOS.81488,81480

ORDER IN
W.P(MD)Nos.5912 to 5915 of 2012
& 5937 to 5939 of 2012
08.08.2019

PS
MS/06.09.2019/5P.5C