BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.9746 of 2012
and
M.P(MD)Nos.1 & 2 of 2012

M/s.Sri Mappillai Vinayagar Roller Flour Mills,
Rep. by its Partner K.Kathirvel,
No.163, Nethaji Road,
Madurai. ... Petitioner

Vs.

1.The Secretary to the Government,
The Commercial Taxes and Registration Department,
St. George Fort,
Chennai.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

3.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the third respondent in her order in TNGST No.478545/1992-93 dated 25.06.2012 and quash the same as unlawful and against the Government Order in G.O.Ms.No.216 dated 11.07.1995 and further to direct her to grant waiver of arrears of surcharge and Additional Sales Tax for the year 1992-93 in the petitioner's case.

For Petitioner : Mr.Niranjan S.Kumar
for Mr.R.D.Ganesan

For Respondents : Mrs.J.Padmavathy Devi,
Special Government Pleader

ORDER

The petitioner runs a roller flour mill and was in business till 2006. The petitioner is a member in the Tamil Nadu Roller Flour Mill Association, Madras and prayed for waiver of arrears of surcharge, additional surcharge and turnover tax under the Tamil Nadu General Sales Tax Act, 1956, for the period 17.03.1990 to 31.03.1993.

2.The representation of the Association has been considered and Government Order has been passed by the Secretary to Government on 11.07.1995 which reads as follows:-

'Government of Tamil Nadu

Abstract

Tamil Nadu General Sales Tax Act, 1959 - Tamil Nadu Roller Flour Mills Association, Madras - Waiver of surcharge, additional surcharge, turnover tax payable for the period from 17.03.1990 to 31.03.1993 orders - Issued

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COMMERCIAL TAXES & RELIGIOUS ENDOWMENTS DEPARTMENT

G.O.Ms.No.216 Dated: 11.07.1995.

i) From the President, Tamil Nadu Roller Flour Mills Association,Madras - 105 Read: Ref.No.213/92-93, dated 03.08.1992.

ii) from the Special Commissioner & Commissioner of Commercial Taxes Lr.Q3/70085/93, dated 01.02.1994.

iii) From the President, Tamil Nadu Roller Flour Mills Association, Madras Letter : 44993-94, dated 08.02.1994.

iv) From the Special Commissioner & Commissioner of Commercial Taxes Lr.Q3/70085/93, dated 04.02.1994.

v) From the Special Commissioner & Commissioner of Commercial Taxes Lr.Q3/70085/93, dated 06.05.1994.

vi) From the Special Commissioner & Commissioner of Commercial Taxes Lr.Q3/70085/93, dated 06.06.1994.

vii) From the Special Commissioner & Commissioner of Commercial Taxes Lr.Q3/45803/94, dated 04.07.1994.

ORDER:-

In the reference third read above, the Tamil Nadu Roller Flour Mills Association, Madras - 105, among other things have represented to waive the arrears of surcharge, additional surcharge and turnover taxable by their Member Mills from 17.03.1990 to 13.04.1993 which they had not collected.

2.The Government after careful examination in consultation with the Special Commissioner &

Commissioner of Commercial Taxes, have decided to accept the request of the Tamil Nadu Roller Flour Mills Association, Madras for the waiver of arrears of surcharge, additional surcharge and turnover tax for the period from 17.03.1990 to 31.03.1993 as a special case.

3.The Notification under sub-Section (4) of Section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act I of 1959) annexed to this order will be published in next issue of the Tamil Nadu Government Gazette.

4.This order issues with the concurrence of Law / Finance Department vide their G.O.Nos.147/S/95 dated 20.06.1995 and 3014/Fs/P/95, dated 11.07.1995 respectively.'

3.Pursuant to the above clarification, vide communication dated 20.07.1995, the Special Commissioner and Commissioner of Commercial Taxes has forwarded the same to the Deputy Commissioner of Commercial Taxes both territory as well as enforcement, requesting them to give effect to the Government Order by instructing the Assessing Officers under their control. A copy of the inter-office communication was also sent to the Association which reads as follows:-

'I invite attention to the reference cited. The Government n their order 9th cited have waived the surcharge, additional surcharge and additional sales tax payable by the Millers for the period from 17.03.1990 to 31.03.1993.

I therefore request you to give effect to the Government Order by instructing the Assessing Officers under your control.

A copy of the G.O is enclosed.

d/ A.S.Krishnarajendran
for Special Commissioner and
Commissioner of Commercial Taxes

Copy to : 'Q' Section
Copy to : Legal Section
Copy to : Acts Coll
Copy to : Audit Cell
Copy to : The Tamil Nadu Roller Flour Mills Association, Madurai - 105.'

4.Based on the aforesaid clarification, the petitioner sought waiver of surcharge, additional surcharge and additional sales tax vide petition dated 11.06.2012. A certificate from the Association to the effect that the petitioner is a member of the Tamil Nadu Roller Flour Mills association was also annexed.

5.The impugned order has however been passed on 25.06.2012 rejecting, in one line, the request of the petitioner stating that 'in the circumstances reported in the Commissioner of Commercial Taxes Letter No.Q3/70085/93, dated 04.02.1994, your request cannot be complied with'. It is not known as to what the aforesaid letter dated 04.02.1994 conveys. In any event, the said letter is not relevant in the light of the Government Order in G.O.Ms.No.216, dated 11.07.1995 accepting the request of the Association for waiver of arrears of surcharge, additional surcharge and turnover tax. The petitioner places great reliance on the G.O itself as well as on the fact that it has been communicated to all the Assessing officers for implementation.

6.The revenue, on the other hand, has filed a counter and argues, in line with paragraph No.5 thereof that the Government Order is not a 'general case', but a 'special case' and hence is applicable to only those circumstances stated therein.

7.I am unable to comprehend what the 'circumstances' are that have been stated in the G.O. The G.O records categorically that the decision to waive the arrears of surcharge, additional surcharge and turnover tax has been taken in consultation with the Special Commissioner and Commissioner of Commercial Taxes and also states that this waiver is extended as a 'special case'. No conditions are mentioned therein.

8.The counter itself states at paragraph No.4 as follows:-

> "4.I further submit that as rightly stated by the petitioner, the Government has passed an order in G.O.Ms.No.216 by accepting the requests of the Tamil Nadu Roller Flour Mills Association, Madras for the waiver of arrears of Surcharge, Additional Surcharge and turnover tax for the period from 17.03.1990 to 31.03.1993 to its members as a special case."

9.The Department thus does not appear to have any doubt in its mind that the Government Order would apply to all members of Roller Flour Mills Association. Moreover, the Special Commissioner has communicated the contents of the Government Order to all Assessing Officers as early as on 20.07.1995, for onward conveyance to the assessing officers for giving effect and all further and necessary action. The present impugned order relying on the letter of the Commissioner of Commercial Taxes dated 04.02.1994 thus constitutes to my mind, flagrant insubordination.

10.The Supreme Court in the case of Union of India Vs. Ahamedabad Electricity Company Limited [2003 (158) ELT 3 (SC)] had deprecated the practice of flouting of the orders of a superior by a junior in authority. This is essentially what has happened in the present case. The Government of Tamil Nadu in consultation with the Special Commissioner and Commissioner of Commercial Taxes, the head of the Commercial Taxes Department, has taken a decision to waive surcharge, additional surcharge and turnover tax for all members of the Tamil Nadu Roller Flour Mills association, Madras for the period 19.03.1990 to 31.03.1993. The Assessing Officer has also been instructed to give effect to the same. Thus, the present impugned order, running counter to both the orders of the superiors, the Government of Tamil Nadu as well as the Principal Commissioner and Commissioner of Commercial Taxes is quashed.

11.Today, learned Special Government Pleader circulates a copy of a communication dated 05.01.2017 to the effect that the request for waiver is being reconsidered by the concerned Assessing Officer.

12.In view of the aforesaid, the Assessing Officer will pass necessary orders in line with the discussion above within a period of two weeks from date of a receipt of a copy of this order.

13.This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to the Government,
The Commercial Taxes and Registration Department,
St. George Fort, Chennai.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

3.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Madurai.

+1 CC to M/s.NIRANJAN.S.KUMAR, Advocate (SR-75776[F] dated 17/07/2019)

W.P(MD)No.9746 of 2012
15.07.2019

ps
JMN(18.09.2019) 5P : 5C