IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 10225 to 10227 of 2012
and
M.P. Nos. 1, 1 and 1 of 2012

M/s. Ashok Leyland Finance Ltd.,
A Division of IndusInd Bank Ltd.,
No. 86, Chamiers Road,
Chennai - 600 028. ... Petitioner in all W.P.s

-vs-

1. The Assistant Commissioner (CT),
Adyar I Assessment Circle,
Chennai - 600 028.

2. The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings,
Greams Road,
Chennai - 600 006. ... Respondents in all W.P.s

Prayer in W.P. No. 10225 of 2012:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Petitioner on the files of the Second Respondent herein in proceedings in TNGST 0860502/1996-1997- (Rc10516/10/B5) and quash the impugned proceedings of the same dated 27.02.2012 by holding that the same is ex-facie illegal, and unconstitutional and ultra-vires the provisions of the TNGST Act, 1959, and untenable as per the dicta of this Court in 101 STC 86 besides being violative of Article 265 of the Constitution of India and contrary to the principles of natural justice.

Prayer in W.P. No. 10226 of 2012:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Petitioner on the files of the Second Respondent herein in proceedings in TNGST 0860502/1997-1998- (Rc10516/10/B5) and quash the impugned proceedings of the same dated 27.02.2012 by holding that the same is ex-facie illegal, and unconstitutional and ultra-vires the provisions of the TNGST Act, 1959, and untenable as per the dicta of this Court in 101 STC 86 besides being violative of Article 265 of the Constitution of India and contrary to the principles of natural justice.

Prayer in W.P. No. 10227 of 2012:- Writ Petition filed under

Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Petitioner on the files of the Second Respondent herein in proceedings in TNGST 0860502/1998-1999- (Rc10516/10/B5) and quash the impugned proceedings of the same dated 27.02.2012 by holding that the same is ex-facie illegal, and unconstitutional and ultra-vires the provisions of the TNGST Act, 1959, and untenable as per the dicta of this Court in 101 STC 86 besides being violative of Article 265 of the Constitution of India and contrary to the principles of natural justice.

For Petitioner :Mr. K.Venkatasubramanian (in all W.P.s)

For Respondents:Mr. A.N.R.Jayaprathap,
Government Advocate (in all W.P.s)

C O M M O N O R D E R
(through video conference)

Heard Mr. K.Venkatasubramanian, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had earlier filed the Writ Petitions in W.P.Nos. 4379 to 4381 of 2011 challenging the notices dated 02.04.2007 issued by the Deputy Commissioner (CT), Chennai (South) Division, Chennai, for cancelling the assessments made by the Commercial Tax Officer, Adyar-I, Assessment Circle for the years 1996-97, 1997-98 and 1998-99 under the Tamil Nadu General Sales Tax Act, 1999 (hereinafter referred to as the 'TNGST Act' for short). Though the said Writ Petitions were dismissed by this Court by order dated 16.08.2011 in the appeal in W.A. Nos. 2089 to 2091 of 2011 preferred by the Petitioner against the same, the Division Bench of this Court by order dated 20.02.2012 held as follows:-

> "3. Having regard to the said submission made by the Learned Counsel appearing for the Respondents, we consider it appropriate to grant eight weeks time to the Respondents to consider the objections filed by the appellant and to pass appropriate orders in accordance with law. The appellant is permitted to raise all objections available to them as per law, before the Respondents for considering their case and passing appropriate orders. The Writ Appeals are disposed of accordingly. No costs. Connected Miscellaneous Petitions are closed."

3. According to the Petitioner, even before the certified copy of the aforesaid order passed by the Division Bench of this Court was made ready by the Registry on 13.03.2002, the Second Respondent had hastily proceeded to pass Order No. 0860502/1996-97, (Rc. 10516/10/85) dated 27.02.2012 in the matter without considering the specific contentions raised by the Petitioner regarding the limitation to re-open the proceedings. Learned Counsel for the Petitioner relies on the decisions of the Division Bench of this Court in State of Tamil Nadu -vs- M.M.Mohideen Thamby & Co. (Order dated 05.07.1995 in Tax Case (Revision) Petition No.135 of 1984), which has been followed by the Learned Judge of this Court in M/s. Salem Steel Suppliers -vs- Deputy Commissioner (CT), Chennai (Order dated 08.08.2017 in W.P.No.24437 of 2004 etc., batch) in support of the said contention.

4. On a bare perusal of the impugned orders, it is apparent on the face of the record that there has not been any reference to the order dated 20.02.2012 in W.A. Nos. 2089 to 2091 of 2011 passed by the Division Bench of this Court and the contention relating to the limitation raised by the Petitioner has not even been considered. In that view of the matter, it is not possible to sustain the impugned orders, which are set aside and the matters are remitted for fresh consideration.

5. Having regard to the lapse of time, the Petitioner shall raise all their objections in writing by a comprehensive reply which shall be submitted by 31.12.2020. The Second Respondent shall thereafter afford full opportunity of personal hearing to the Petitioner, deal with each of the objections raised including the question of limitation, and pass reasoned orders on merits and in accordance with law following the prescribed procedure in consonance with the principles of natural justice and communicate the decision taken to the Petitioner on or before 31.03.2021 under written acknowledgment.

Accordingly, the Writ Petitions are ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt/msm

To

1. The Assistant Commissioner (CT),
   Adyar I Assessment Circle,
   Chennai - 600 028.

2. The Joint Commissioner (CT),
   Chennai (South) Division,
   PAPJM Buildings,
   Greams Road,
   Chennai - 600 006.

Copy to

M/s. Ashok Leyland Finance Ltd.,
A Division of IndusInd Bank Ltd.,
No. 86, Chamiers Road,
Chennai - 600 028.

+1cc to Special Government Pleader(taxes), sr no.36625
+2ccs to Mr.K.Venkatasubramanian, Advocate, sr no.36609,36608

W.P. Nos. 10225 to 10227 of 2012

SRA(CO)
RMP(02/12/2020)