IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

CORAM

THE HON'BLE Dr.JUSTICE VINEET KOTHARI
AND
THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.2111, 2112, 2113, 2114 and 2116 of 2006

M/s.Greenland Exports Private Ltd.,
16, Sir Thyagaraya Road,
Chennai - 600 017. ..Petitioner in all WPs

Vs.

1.The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road, Chennai - 25.

2.The Appellate Assistant Commissioner (CT III)
Kuralagam Annexe, Chennai.

3.The Tamil Nadu Sales Tax Appellate Tribunal,
Chennai.

4.The Deputy Commissioner (CT)
Chennai (Central) Division,
C.T.Building, Greams Road,
Chennai - 600 0006. ..Respondents in all WPs

Prayer in WP.No.2111/2006: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent in SR.120/2002/B2 in Rc.13672/2002 dated 30.09.2003 and quash the said order and directing the fourth respondent to process the samadhan application filed by the petitioner and issue a certificate of settlement of dispute and refund the balance of 50% of disputed tax along with interest already paid for the assessment year 1992-1993.

Prayer in WP.No.2112/2006: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring that the provisions of sub section (4) of Section 6 of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 (Tamil Nadu Act 17/2002) as unconstitutional violative of Article 14 of the Constitution of India as void and of no force and a consequential relief directing the first respondent to make refund of excess tax paid by the petitioner for assessment year 1992-93.

Prayer in WP.No.2113/2006: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent in SR.121/2002/B2 in Rc.13672/2002 dated 30.09.2003 and quash the said order and directing the fourth respondent to process the samadhan application filed by the petitioner and issue a certificate of settlement of dispute and refund the balance of 50% of disputed tax along with interest already paid for the assessment year 1993-1994.

Prayer in WP.No.2114/2006: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent in SR.122/2002/B2 in Rc.13672/2002 dated 30.09.2003 and quash the said order and directing the fourth respondent to process the samadhan application filed by the petitioner and issue a certificate of settlement of dispute and refund the balance of 50% of disputed tax along with interest already paid for the assessment year 1994-1995.

Prayer in WP.No.2116/2006: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the fourth respondent in SR.123/2002/B2 in Rc.13672/2002 dated 30.09.2003 and quash the said order and directing the fourth respondent to process the samadhan application filed by the petitioner and issue a certificate of settlement of dispute and refund the balance of 50% of disputed tax along with interest already paid for the assessment year 1995-1996.

[In all WPs]
For Petitioner : No appearance
For Respondents: Mr.R.Swarnavel
Government Advocate (Taxes)

COMMON ORDER
(Order of the Court was made by DR.VINEET KOTHARI, J.)

The Assessee has filed these Writ Petitions aggrieved by the common order passed by the Deputy Commissioner (CT), Chennai on 30th September, 2003 availing the benefit of the Samadhan Scheme for the reason that the Assessee had already paid the entire tax before applying under the said Scheme and therefore, the Assessee was not entitled to avail the benefit of the said Scheme.

2.The said Samadhan Scheme envisaged the existence of arrears of tax, penalty or interest on the part of the Assessee that some dispute pending, in some Forum. The learned Deputy Commissioner by the impugned order dated 30 September, 2003, has held that since the Assessee has already paid the tax before making an application under the said Scheme, therefore, it was not entitled to avail the benefit. The relevant portion of the impugned order dated 30th September, 2003 is quoted below for ready reference.

> "The applicants were issued a notice on 20.6.2003 to show cause as to why their application should not be rejected. The applicants filed their objections on 28.6.2003.
>
> The applicants have stated that they are eligible to file an application under the Samadhan Scheme and that the fact that they have paid the entire arrears cannot disqualify them from filing an application under the Samadhan Scheme. They have further stated that the only criteria for filing an application is the pendency of an appeal or revision before 28.2.2002 and nowhere in the Act, it has been stated that the assessee would be disqualified if he had paid the entire arrears before filing the application under the Scheme. Hence, they requested to accept the application in the instance of appeal still pending before the Sales Tax Appellate Tribunal.
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> The dealers reply cannot be considered as the section 4(1) of the Act clearly provides that an applicant may make an application for settlement of arrears of Tax, Penalty or Interest in dispute. In the case of the applicant, as envisaged in item 7(c) of Form I, the petitioner had already paid the entire dues in dispute and were not in arrears as on 28.2.2002. In view of that, the application filed is held as not entertainable under Samadhan Scheme and is therefore rejected."

3.None is appeared on behalf of the Assessee, though on the last occasion M/s.Sri Niranjani, learned counsel had sought adjournment on behalf of M/s.Maliga Srinivasan from the Court.

4.We have heard the learned counsel for the Revenue.

5.Having heard the learned counsel for the Revenue, we are satisfied that there is no error in the impugned order passed by the Deputy Commissioner and in the absence of the arrears of tax, penalty, interest bearing free as the tax already stood paid, the Assessee by applying under the said Scheme cannot take advantage of reduction of the tax liability to the extent of 50%.

6.The learned Deputy Commissioner appears to be justified in rejecting such applications filed by the Assessee, the present Writ Petitions filed by the Assessee are therefore found to be no merits and liable to be dismissed and the same are accordingly dismissed. No costs.

Sd/-
Asst.Registrar (AD I MDU)

/true copy/

Sub Asst. Registrar

Sgl
To
1.The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road, Chennai - 25.
2.The Appellate Assistant Commissioner (CT III)
Kuralagam Annexe, Chennai.
3.The Tamil Nadu Sales Tax Appellate Tribunal, Chennai.
4.The Deputy Commissioner (CT)
Chennai (Central) Division,
C.T.Building, Greams Road,
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+ 1 cc to Special Government Pleader Sr.21783

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2114 and 2116 of 2006

SSV(CO)
EU 9.7.2020