IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 12507, 14363 & 14364 of 2010
and
M.P. Nos. 1 to 3 of 2010 & 1,1 of 2010

Tvl. Mahaveer Mirror Industries (P) Ltd.,
Represented by its Director,
Madanlal B. Chowatia,
126, Choolai High Road,
Choolai, Chennai – 600 112. ... Petitioner in all W.Ps

Vs

1. The Commercial Tax Officer,
   Choolai Assessment Circle,
   Office of the Assistant Commissioner
   of Commercial Tax,
   No.2000, Demello Road,
   Choolai, Chennai – 600 112.

2. The Joint Commissioner (CT),
   Chennai (Central) Division,
   Chennai – 600 006. ... Respondents in all W.Ps

Prayer in W.P. No. 12507 of 2010: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the Second Respondent dated 03.06.2010 in R.C. No. 3302/2010/B1 and quash the same.

Prayer in W.P. No. 14363 of 2010: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the First Respondent dated 24.02.2010 in TNGST/0500792/92/1999-2000 and quash the same.

Prayer in W.P. No. 14364 of 2010: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the First Respondent dated 24.02.2010 in TNGST/0500792/92/2000-2001 and quash the same.

For Petitioner (in all W.Ps) : Mr. Murali Kumaran for M/s. McGan Law Firm

For Respondents (in all W.Ps) : Mr. A.N.R. Jayaprathap Standing Counsel

COMMON ORDER

By this common order all the three Writ Petitions are being disposed.

2. In these Writ Petitions, the petitioner has challenged the following impugned notices.

Writ Petition	Impugned Notice dated	Impugned Notice No	Assessment Year
12507/2010	03.06.2010	Rc.No.3302/2010/B1	1999-2000
14363/2010	24.02.2010	TNGST/0500792/92/1999-2000	1999-2000
14364/2010	24.02.2010	TNGST/0500792/92/2000-2001	2000-2001

3. The brief facts of the cases are that two assessments were completed by way of two separate assessment orders dated 30.04.2011 and 06.03.2002 for the Assessment Years 1999-2000 and 2000-2001 respectively.

4. The Commercial Tax Department however sought to re-open the assessments and therefore notices issued under Section 16 of the TNGST Act , 1959 on 25.02.2003 which was culminated in two separate orders dated 31.01.2005 for the respective assessment years.

5. Aggrieved by the same, the petitioner preferred two separate appeals before the Appellate Assistant Commissioner (CT) - III, who by two separate orders dated 16.05.2005 remanded the case back to the Assessing Officer to pass fresh orders.

6. The petitioner was thereafter issued with two Show Cause Notices dated 03.07.2009 pursuant to the aforesaid remand order dated 16.05.2005 of the Appellate Assistant Commissioner (CT) – III. These Show Cause Notices were challenged by the petitioner in W.P.Nos.15320 & 15321 of 2009 before this Court.

7. By an order dated 06.08.2009, this Court disposed the two Writ Petitions filed by the petitioner by directing the petitioner to submit its objections to the two Show Cause Notices dated 03.07.2009 within a period of two weeks from the date of receipt of the aforesaid order.

8. Pursuant to the above directions of this Court, the petitioner also filed a detailed objections dated 26.08.2009 and requested the 1st respondent to pass appropriate orders on the preliminary objections raised by the petitioner on the ground of limitation prescribed under Section 16 of the TNGST Act, 1959.

9. According to the petitioner, both the revision proceedings seeking to revise the assessment were time barred. It was submitted that for the Assessment Year 1999-2000, the proceedings were initiated after 6 years 11 months and 12 days, whereas, for the Assessment Year 2000-2001, the proceedings were initiated after 5 years 11 months and 12 days, and that fresh notices dated 03.07.2009 were beyond the period of limitation prescribed under Section 16 of the TNGST Act, 1959.

10. These objections of the petitioner was rejected vide two separate communications dated 24.02.2010 which called upon the petitioner to file its objections if any within a period of 15 days. Against the aforesaid communications calling upon the petitioner to furnish its reply on merits, the petitioner filed two separate revision petitions dated 12.03.2010 under Section 33 of the TNGST Act, 1959 before the 2nd respondent Joint Commissioner (CT).

11. By a communication dated 19.03.2010, the petitioner was informed that the said revision petitions could be filed before the 2nd respondent Joint Commissioner (CT) under Section 33 of the TNGST Act only against any order or proceedings for which there is no appellate remedy provided for in Section 31 of the TNGST Act, 1959. In this case, only notice has been issued which has proposed for revision of assessment under Section 16(1) of the TNGST Act, to pass an order under Section 16(1) and 16(2) of the TNGST and against such order, an appeal would lies only before the Appellate Deputy Commissioner (CT).

12. The petitioner re-presented the revision petitions once again and called upon the 2nd respondent to take up the revision petitions on merits. Thereafter, the petitioner filed W.P.Nos.9771 & 9772 of 2010 before this Court for mandamus to direct the 2nd respondent to pass orders in the said stay applications dated 12.03.2010 filed along with revision petitions dated 12.03.2010 for the respective assessment years.

13. By an order dated 05.05.2010, this Court directed the 2nd respondent to pass orders one way or the other in the revision petitions filed by the petitioner. The operative portion of the said order reads as under:-

> 9. In view of the above stated position, I am inclined to direct the second respondent to pass orders one way or the other in the revision petition filed by the petitioner. If for any reason, the second respondent finds that the revision is not maintainable, he has to consider the submissions of the petitioner and give in writing how the revision is not maintainable and has to pass orders one way or

the other. If the second respondent finds that the revision is maintainable, he is directed to consider the stay application and pass appropriate orders on merits. The said exercise has to carried out by the second respondent within a period of two weeks from the date of receipt of a copy of this order. However, till the order is passed by the second respondent, neither the first respondent nor the second respondent shall proceed further in pursuant to the order of the first respondent dated 24.02.2010.

14. However, by a communication dated 10.05.2010 the petitioner was informed that the revision petition filed by the petitioner on earlier occasion was not entertained and was disposed with a observation that the "petitioner had filed the same set of papers again under the guise of revision petition with a prayer to pass an order on merits knowing fully well that a mere notice from the Assessing Officer is not a ground to file a Revision Petition as the provisions of the Act does not envisage filing of Revision Petitions on notices issued by an Assessing Officer. This king of frivolous petitions therefore deserves no consideration and not entertainable under Section 33 of the TNGST Act".

15. The petitioner thereafter sent another re-presentation in the form of the revision petitions, which were received by the office of the 2nd respondent on 17.05.2010. Pursuant to the same, the petitioner was issued with notice dated 03.06.2010 in bearing reference No.Rc.No.3302/2010/B1 which has been impugned in W.P.No.12507 of 2010, wherein, it has been stated as follows:-

> With reference to the order of the Hon'ble High Court of Madras dated 05.05.2010, the petitioners are informed that the submissions received in the reference first cited have been considered and reply already sent vide this office reference dated 10.05.2010.
>
> Thus the requests of the petitioners have already been complied with, in writing.

16. In other words, the 2nd respondent reiterated the order dated 10.05.2010.

17. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents. I have perused the documents filed by the petitioner and the counter affidavit filed by the respondents.

18. On merits, the learned counsel for the petitioner submits that by an internal order dated 01.03.2007, the Deputy Commercial Tax officer had recommended for dropping of demand with the following observations:-

> "Subsequent to the proceedings of the Appellate Assistant Commissioner the dealer's were issued a notice in this office TNGST no.0500792/1999-2000 dated 09-11-2006 calling for the submission of the copies of the records which were produced before the Appellate Assistant Commissioner as evidences of proof in support of their claim for third sellers in the State. The dealer vide their letter dated 04-12-2006 had furnished the entire copies of the documents relating to the purchases effected from Tvl.Sivam Enterprises, along with the proof for the movement of the goods in support of their claim for exemption on their subsequent sales. The records produced had been verified and found that all the purchases had been covered by purchase bills and proof for payment through Bank was also established and proof of movement of goods were also established. Therefore is is clearly established that their transactions effected from Tvl.Sivam Enterprises are genuine and that their sales are third sales in the State which is liable for exemption.
>
> Hence as suggested by the Appellate Assistant Commissioner in his order the above purchase turnover since it has been accounted for in their books of accounts the same cannot be treated as Turnover escaped from assessment and the subsequent levy of Penalty under Section 16 (2) (c) and Penalty under Section 10 (3) (1) does not arise. Hence I request orders for deviating from the Proposals received from the enforcement wing and revise the assessment accordingly."

19. It appears that order dated 01.03.2007 internally reviewed on 26.03.2007, wherein, it was observed that question of levy of penalty under Section 16(2)(c) and 10(3)(1) did not arise since the purchased turnover has been accounted for in the books of accounts of the petitioner. Therefore, it was suggested that the Deputy Commissioner (CT), Chennai, Chennai Central Division, to consider the deviation proposals submitted by the Commercial Tax Officer and to issue appropriate orders.

20. It however is an internal communication bearing reference R.C.No422/07/B1/Dated 01-03-2007 exchanged between the Commercial Tax Officer and the Assistant Commissioner (CT). It is not an order which was communicated to the petitioner.

21. It is noticed that the petitioner has challenged only the notices issued by the 1st respondent on 24.02.2010 pursuant to the orders dated 16.05.2005 of the Appellate Assistant Commissioner (CT) - III and a notice issued pursuant to the order dated 05.05.2010 of this Court in W.P.Nos.9771 & 9772 of 2010. All the Writ Petitions were filed by the petitioner including the present Writ Petitions were nothing, but abuse of the court proceeding.

22. Since the direction of this Court in the above Writ Petitions has not been complied with, I am inclined to quash the impugned notice dated 03.06.2010 for failure to comply with the directions of this Court in W.P.Nos.9771 & 9772 of 2010 thought it is really not open to the petitioner to truncate the assessment proceedings to preliminary and final order. However, the revenue has also not filed any appeal against the order dated 05.05.2010 passed by this Court in W.P.Nos.9771 & 9772 of 2010, I therefore direct the 2nd respondent to pass appropriate orders.

23. Under these circumstances, I direct the 2nd respondent to disposed the revision petitions filed by the petitioner after hearing the petitioner in terms of the aforesaid directions of the court in W.P.Nos.9771 & 9772 of 2010, on 05.05.2010.

24. Since the dispute pertains to the Assessment Years 1999-2000 and 2000-2001, the 2nd respondent is directed to pass appropriate orders on merits within a period of six weeks from the date of receipt of a copy of this order. Needless to state that before passing such orders, the petitioner shall be heard.

25. Pending disposal of the aforesaid revision petitions, the proceedings for re-assessment pursuant to the remand order dated 16.05.2005 of the Appellate Assistant Commissioner (CT) – III shall be kept in abeyance.

26. In case the revision petitions are answered against the petitioner, the 1st respondent or any other officer authorised to pass such order is directed to complete the assessment proceedings pursuant to the remand order dated 16.05.2005 of the Appellate Assistant Commissioner within a period of eight weeks from such order of the 2nd respondent.

27. It is made clear that no further writ petition shall be entertained by this Court. It is open for the petitioner to raise all the contentions on merits including the point relating to limitation before the 2nd respondent thereafter.

28. The present Writ Petitions stand disposed with the above directions. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

arb / jen

To

1. The Commercial Tax Officer,
   Choolai Assessment Circle,
   Office of the Assistant Commissioner of Commercial Tax,
   No.2000, Demello Road,
   Choolai, Chennai - 600 112.

2. The Joint Commissioner (CT),
   Chennai (Central) Division, Chennai - 600 006.

+1cc to M/s. McGan Law Firm, Advocate SR.No.8155

+1cc to Special Government Pleader(Taxes) SR.No.8156

W.P. Nos. 12507, 14363 & 14364 of 2010
and
M.P. Nos. 1 to 3 of 2010 & 1,1 of 2010

VG II(CO)
GMY(09/07/2020)