IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos.39106 to 39110 of 2005
and WMP.Nos.41880 to 41884 of 2005

M/s.RPG BTP India Pvt Ltd,
Spencer Plaza
769 Anna Salai, Chennai-2. ... Petitioner in all W.Ps.

Vs.

1.The Deputy Commissioner (Commercial Taxes)
Chennai II Division, II Floor, PAPJM Building
Greams Road, Chennai-6.

2. Commercial Tax Officer,
Anna Road II Assessement Circle,
621 Anna Salai, Chennai-2.

3. The Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-5. ... Respondents in all W.Ps.

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in the impugned proceedings dated 16.06.2005 in Nos.A11/8241/02, A11/9129/02, A11/9126/02, A11/9128/02 and A11/9127/02 respectively and quash the same and also to direct the respondent to issue certificate to the petitioner.

For Petitioner : M/s.Radhika Chandrasekar,
(in all cases)
For Respondents : Mr.R.Swarnavel, GA(Tax)
(in all cases)

COMMON ORDER

Heard the learned counsel for the petitioner and the respondents.

2. By this common order, all the five writ petitions are being disposed.

3. By the impugned orders, the first respondent has rejected the Samadhan Application filed by the petitioner to settle the arrears of tax under the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

4. Aggrieved by the order of rejection vide Ref.No.A11/8241 & 9126 to 9129/2002 dated 16.06.2005, the petitioner filed these writ petitions. On the other hand, the respondent submitted that these writ petitions were not maintainable either on facts or on law.

5. The petitioner was under the Interest Free Sales Tax Deferral Scheme. Assessment orders were passed for the period covered under the deferral scheme and non deferral scheme for the assessment years 1996-1997, 1997-1998 and 1998-1999 respectively.

6. Dispute arose on account of failure on the part of the petitioner to submit "C" form for claiming concession for inter-state sale and Form-XVII declaration. The petitioner preferred appeal before the Appellate Deputy Commissioner. There is no dispute on this.

7. Meanwhile, the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 came into force w.e.f. 26.05.2002 which entailed an assessee to settle dispute relating to arrears of tax, penalty or interest as the case may be under the TNGST Act, 1959, the repealed TN Sales Tax (Surchage) Act, 1971, the Tamil Nadu Additional Sales Tax Act, 1970 and the Central Sales Tax Act, 1956.

8. Taking advantage of the above scheme, the petitioner filed the following applications in Form-I in terms of Section 5 of the aforesaid Act, as detailed below :-

WP.Nos.	Assessment year	Date of application in Form-I	Date of 1st Notice	Date of order rejecting application
39106/2005	1996-97 (TNGST)	26.07.2002	26.06.2003	16.06.2005
39107/2005	1996-97 (CST)	22.08.2002	26.06.2003	16.06.2005
39108/2005	1997-98 (TNGST)	22.08.2002	26.06.2003	16.06.2005
39109/2005	1997-98 (CST)	22.08.2002	26.06.2003	16.06.2005
39110/2005	1998-99 (TNGST)	20.08.2002	08.09.2003	16.06.2005

9. The petitioner was issued with notices dated 26.06.2003 and 08.09.2003 wherein the amount split under the deferral scheme and non deferral scheme were referred. It acknowledged the applications filed by the petitioner and showed that the petitioner was claiming the benefit of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 for the tax due both under deferral and non deferral scheme.

10. The learned counsel for the petitioner submits that as per Rule 3(5) of the Tamil Nadu Sales Tax (Settlement of Disputes) Rules, 2002, if the designated authority finds any defect or omission in the application he has to return the application for rectification of the defect or for supplying the omission and to represent. This notice according to the petitioner ought to have been issued within 10 days from the date of receipt of the application.

11. According to the petitioner, these notices were beyond the period of limitation prescribed under the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 and Tamil Nadu Sales Tax (Settlement of Disputes) Rules, 2002.

12. The learned counsel for the petitioner further submits that the application for deferral were filed during the month of July and August 2002 as detailed in the above table. Since, these notices were issued long after expiry of 10 days as contemplated in Rule 3(5) of the said Act, it is submitted that these notices were barred under law.

13. The learned counsel for the petitioner further submits that by the impugned orders dated 16.06.2005 all the applications have been rejected by the first respondent on the ground that the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 does not contemplate splitting of case for settling the arrears.

14. Section 4 of the said Act contemplates eligibility for settlement which reads as under :

> "Eligibility for settlement :-(1)Subject to the order provisions of this Act, an applicant may make an application for settlement of arrear of tax, penalty or interest in dispute in respect of any period for which an assessment has been made under the relevant Act, -
>
> (i)against which an appeal or revision has been filed on or before the 28th day of February 2002, before any appellate authority or revisional authority, as the case may be, and pending before such authority

on or before the date of making an application under Section 5;

(ii)against which an order in appeal or revision is received by the dealer on or before the 15th February, 2002 and further appeal or revision is filed and pending before making an application under Section 5.

Explanation - For the purpose of this Act, appeal or revision shall not include writ or writ appeal.

(2) Notwithstanding anything contained in sub-section (1) an applicant shall not be eligible to make an application for settlement of arrear of tax, penalty or interest in dispute in respect of any period under the relevant Act for which the appeal or revision has been finally heard by the appellate authority or the revisional authority, as the case may be."

15. The expression "arrears of tax also" has been defined in Section 2(b) which reads as follows :-

"2(b) "arrears of tax, penalty or interest in dispute" means -

(i)tax, by whatever name called, payable by an applicant upon assessment under the relevant Act, or

(ii)penalty payable by an applicant under the relevant Act, or

(iii)interest payable by an applicant under the relevant Act, -

as the case may be, which is in dispute in any appeal or revision pending before the appellate authority or revisional authority on the 28th February, 2002 under the relevant Act;".

16. The learned counsel for the respondent drew my attention to paragraph 4 of the counter filed by the respondent, wherein it is submitted that there is no provision in the Act to split the amount into deferral and non deferral under Samadhan Scheme. It was therefore submitted that the application filed by the petitioner under the Samadhan scheme were liable to be rejected in terms of Section 8(2) of the Act.

17. I have heard the learned counsel for the petitioner and the learned counsel for the respondents.

18. The object of the scheme under the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 is to give a quietus to an

assessee to settle the disputes and therefore to the extent an assessee is in arrear of tax as defined under Section 2(b), the benefit of such scheme cannot be denied to the petitioner merely because the petitioner was also operating under the Interest Free Sales Tax Deferral Scheme. The said Scheme contemplates payment of liability which is deferred. Therefore, to that extent it cannot be said that the petitioner was in arrears of tax within the meaning of Section 24 of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. However, to the extent the petitioner was in arrears of tax outside deferral scheme, the petitioner is entitled to the benefit thereof.

19. The Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 also does not expressly preclude an assessee from availing the benefit of the Samadhan Scheme, who were under the Interest Free Sales Tax Deferral Scheme for the amounts which were outside deferral period. Since the petitioner was in arrears of tax determined by the assessing officer for the non-deferral period, benefit of Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 cannot be denied to the petitioner.

20. The petitioner is entitled to settle the arrears of tax qua non deferral amount alone. Therefore, to the extent the impugned order denying the benefit of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 to the petitioner qua non deferral tax is liable to be quashed.

21. Accordingly, the impugned orders are quashed partly to that extent. The writ petitions thus partly allowed. The first respondent is therefore directed to issue appropriate certificates to the petitioner stating that the petitioner has settled the liability to the extent of arrears of tax for the non deferral period alone. No costs. Consequently. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Commissioner (Commercial Taxes)
Chennai II Division
II Floor, PAPJM Building
Greams Road, Chennai-6.

2. The Commercial Tax Officer,
Anna Road II Assessement Circle,
621 Anna Salai, Chennai-2.

3. The Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-5.

+1 cc to M/s.K.Vaitheeswaran,Advocate Sr.No. 3312
+1 cc to The Special Government Pleader(Taxes) Sr.No. 3593

AKM/10.03.2020/6P-6C /

W.P.Nos.39106 to 39110 of 2005