IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No.24309 of 2015
and
M.P.No.2 of 2015

M/s Indian Commercial Syndicate,
Rep.by its Partner R.Natarajan,
No.47, GB Mayflower Roylae,
Basyagarlu Road (East),
Coimbatore 641 002. .. Petitioner

/versus/

1.The Special Committee,
Secretariat, Chennai 600 009.

2.The Commercial Tax Officer(CT),
Now upgraded as Assistant Commissioner(CT),
Mettupalayam Road Assessment Circle,
Commercial Taxes Building,
Balasundaram Chettiar Road,
Coimabtore 641 018. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in SCP No.01/2015 (Ref.No.M1/19981/2013)/dated 15.05.2015 and the consequential order of second respondent in TNGST/2000205/1998-99 dated 30/12/2005, TNGST A.No.2000215/1998-99 dated 18/01/2002, TNGST No.2000215/1999-00 dated 18/01/2002, quash the same and further direct the second respondent to return the seized records or in the alternative furnish xerox copies of the records seized vide D-7 receipt dated 22/02/2000 and thereafter, afford a real and effective opportunity including personal hearing and thereafter pass orders in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.Mohammed Shaffiq
Spl.G.P.

O R D E R

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in SCP No.01/2015 (Ref.No.M1/19981/2013)dated 15.05.2015 and the consequential order of second respondent in TNGST/2000205/1998-99 dated 30/12/2005, TNGST A.No.2000215/1998-99 dated 18/01/2002, TNGST No.2000215/1999-00 dated 18/01/2002, quash the same and further direct the second respondent to return the seized records or in the alternative furnish xerox copies of the records seized vide D-7 receipt dated 22/02/2000 and thereafter, afford a real and effective opportunity including personal hearing and thereafter pass orders in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959.

2. The petitioner has impugned the order passed under Section 16-D of the TNGST Act, 1959. By the said said order, a Special Committee has rejected the application filed by the petitioner with the following observations:

> "7.Since the applicants failed to co-operate with the assessing authority in assessment proceedings, the impugned orders were served on them by way of affixtures only. The re-assessment proceedings for the year 1998-1999 dated 18.1.2002 was served by affixture on 13.1.2002 and the final assessment order for the year 1999-2000 dated 18.1.2002 was served by affixture on 19.1.2002. Therefore, the contention of the applicants that they were not given sufficient opportunity of hearing before passing the impugned orders is not acceptable. Further, the applicants have not established that the orders passed in the impugned proceedings were against any provisions of TNGST Act and Rules. Since the applicants failed to produce their accounts for check and submit necessary documentary evidences for their claim of exemption, the assessing authority had rejected the claim of exemption and passed the

best judgment orders in the impugned proceedings under section 12(2) of TNGST Act. Therefore, this committee does not see any valid grounds to entertain the application under Section 16-D of the TNGST Act.

8.This application has been filed in 2013 against the impugned proceedings passed in 2002. No limitation period has been prescribed for filing application under Section 16-D of TNGST Act. In such circumstances, the limitation period of 3 years prescribed under the Limitation Act, 1963 is applicable to this application. When this limitation period is applied, the present petition is barred by the limitation period of three years and hence, not admissible.

9.In view of the above discussion, the Special Committee concludes that there are no valid legal and factual grounds to entertain the application filed by the applicants."

3. The dispute in the present case pertains the Assessment Year 1998-1999 and 1999-2000. It is the contention of the petitioner that the petitioner was engaged in manufacture and sale of Poultry feed which was exempted in terms of Entry No.57 of Part B of the Third Schedule of TNGST Act, 1959 which has existed till 26.03.2002. Since, the petitioner claimed to be exempted dealer, the petitioner claims that the petitioner had not maintained proper records. The assessment were completed by an order dated 20.08.2000. While passing the said order, the Assessing Officer reserved the rights with the following observations:-

"Since the assessment is finalised without check of accounts, the department reserves its right to re-open the case and to tax any turn over if necessary in a later date."

4. Prior to passing the above Assessment Order dated 28.08.2000, the petitioner's unit was surveyed by the Officers of the Commercial Tax Department on 22.02.2000 and available records were seized. Meanwhile, the petitioner's partner Mr.R.Natarajan, who was the person-in-charge of the petitioner firm was arrested under the provisions of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

5. Thereafter, petitioner was released on 04.07.2000, pursuant to a conditional bail granted by the Special Court in Crl.M.P.No.479/2000 in Crime No.3/2000 In the said order, the address on the petitioner for 11 different categories of cases were directed to be served on Mr.Kothanda Ramaswamy, Advocate, No.65, Arts College Road, Coimbatore – 18.

6. Meanwhile, the properties of the petitioner firm was also attached and pre-assessment notice dated 22.01.2001 for Assessment Year 1999-2000 and another notice dated 26.12.2001 for the Assessment Year 1998-1999 and 1999-2000 were issued which according to the petitioner were never served on the petitioner. Pursuant to these notices, the assessments were revised for the Assessment Years 1998-1999 and 1999-2000 two separate orders dated 18.01.2002 were passed.

7. According to the petitioner, these orders were also purportedly affixed at the place of business which was also under lock and seal under the provision of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. Thereafter, the recovery proceedings were initiated and a notices recovery dated 14.08.2002 were sent to the petitioner and the other partners of the petitioner's firm.

8. Under these circumstances, an application under RTI was filed by the petitioner on 30.08.2012. The petitioner obtained copies of the respective assessment orders under RTI. In the above background, the petitioner filed an application under Section 16-D of TNGST Act, 1959 during the month of June 2013 which culminated in the impugned order dated 15.05.2015 of the 1st respondent. In the revision proceedings, the 2nd respondent had treated the goods sold by the petitioner as feeds supplement classifiable under Entry No.13 of Part B to the First Schedule and therefore liable to tax.

9. It is the contention of the learned counsel for the petitioner that Entry 13 of the Part B to the First Schedule applies to Poultry Feeds Supplement for the first time in the year 2001 fixing the rate at 2%.

10. The respondent have justified the impugned order stating that the orders are well reasoned and requires no interference. It is further stated that the petitioner had failed to co-operate in the assessment proceedings. When the impugned order were served on them by way of affixture, the petitioner ought to

invoked appellate remedy. It is submitted that the scope under Section 16-D of the TNGST Act, 1959 is limited and the application was time barred and has been rightly dismissed by the 1st respondent.

11. The learned Special Government Pleader appearing for the respondents further submits that the petitioner had not co-operated with the proceedings by filing the return in time or furnish the documents, when the Commercial Tax Officer called for. He further submits that the assessment orders were passed, after issuance of notice. The learned Special Government Pleader appearing for the respondents would further submit that the petitioner was not diligent and therefore, no sympathy should be shown to the petitioner and therefore, he submits that the present writ petition is liable to be dismissed with costs.

12. I have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

13. The case of the petitioner is that assessment orders were passed on 28.08.2000 for the Assessment Year 1998-1999 and on 18.01.2002 for the Assessment Year 1999-2000. The assessment was completed with a caveat that since the assessment orders being finalised without check of accounts, the department reserved its right to re-open the case and to tax any turnover, if necessary at a later date. For the assessment year 1999-2000, pre-assessment notice was issued on 22.01.2001. The petitioner had also replied to the same and thereafter, notices were issued on 26.12.2001 for the Assessment Years 1998-1999 and 1999-2000 respectively and thereafter, two other revision notices were issued for the Assessment Years 1998-1999 and 1999-2000.

14. The 1st respondent has dismissed the application filed by the petitioner under section 16-D of the Tamil Nadu General Sales Tax Act, 1959 with the observation that though there is no limitation prescribed under the aforesaid provision, the petitioner should have filed application within three years of the orders passed by the 2nd respondent.

15. The very purpose of giving such wide power to the Special Committee constituted under the aforesaid provision is to pass appropriate orders when an assessee has no other remedy left and where orders have been passed in violation of the provisions of the Act or the rules made their under or without following the principles of natural justice.

16. Powers vested with the 1st respondent include the powers to set aside orders impugned before it or direct the Assessing Officer to make a fresh assessment and/or pass fresh order in such manner as may be directed. Thus, power has been given to the 1st respondent to examine the issue without any inhibition of limitations prescribed under the Act where an assessee was unable to participate in the proceeding or appropriate order from an Assessing Officer.

17. Though the impugned order of the 1st respondent adverts to be proceedings which was challenged before it, it fails to address the core issue before it.

18. Since the petitioner did not get to participate in the hearing and an ex parte order came to be passed by the 2nd respondent, I am of the view that the petitioner deserves an opportunity of being heard.

19. I am therefore of the view that the impugned order of the 1st respondent Special Committee is liable to be quashed. I, however do not find any merit in remitting the case back to the 1st respondent to pass a fresh order under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959 at this distant point of time. Therefore, the impugned order is quashed and the case is remitted back to the 2nd respondent to pass appropriate orders on merits.

20. The 2nd respondent is therefore directed to pass appropriate orders on merits within a period of three months from date of receipt of a copy of this order. Needless to state the 2nd respondent shall call upon the petitioner for a hearing. It is made clear that service of the notice on Mr.R.Natarajan (partner), M/s Indian Commercial Syndicate, No.47, GB Mayflower Roylae, Basyagarlu Road (East), Coimbatore 641 002, given in the affidavit filed in support of the present writ petition shall be sufficient service of the notice and if the petitioner fails to co-operate in the proceeding before the 2nd respondent, 2nd respondent has requested to pass orders based on the available material.

21. The 2nd respondent Assessing Officer or any other officer designated in the light of repeal of TNGST Act, 1959 and TNVAT Act, 2006 and in view of TNGST Act, 2017 is therefore

requested to pass appropriate orders on merits in accordance with law, after giving an opportunity to the petitioner of being heard. The petitioner is directed to appear before the 2^{nd} respondent or such other officer designated for the aforesaid purpose on 15.03.2020 without fail. The petitioner shall file a reply within 30 days thereafter. A date for hearing shall be fixed and personal hearing shall conduct within a period of 30 days thereafter. It is made clear that if the petitioner fails to co-operate in the proceedings before the 2^{nd} respondent Assessing Officer, the 2^{nd} respondent/Assessing Officer shall pass appropriate orders based on the available records.

22. The writ petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

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To
1.The Special Committee,
Secretariat, Chennai 600 009.

2.The Commercial Tax Officer(CT),
Now upgraded as Assistant Commissioner(CT),
Mettupalayam Road Assessment Circle,
Commercial Taxes Building,
Balasundaram Chettiar Road,
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