IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

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

W.P. Nos. 32257, 33878 and 33879 of 2015
and
M.P. Nos. 1, 1, 1, 2 and 2 of 2015

W.P. No. 32257 of 2015:-

Mahindra & Mahindra Limited,
Rep. by Shri R K Sairam, Manager CI & S Accounts-Admn,
Mahindra Towers, 1st Floor,
No. 17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

-vs-

1. The Joint Commissioner (C.T) Appeals, Chennai,
3rd Floor, CT Building Annex,
Greams Road,
Chennai – 600 006.

2. The Deputy Commissioner (C.T) – II Large, Tax payers Unit,
5th Floor, Dugar Towers,
No. 34, Marshall Road,
Chennai – 600 008. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Order A.P. No. 24/2014, A.P. No. 159/2014 dated 06.03.2015 passed by the First Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar
For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

W.P. No. 33878 of 2015:-

Mahindra & Mahindra Limited,
Rep. by Shri R K Sairam, Manager CI & S Accounts-Admn,
Mahindra Towers, 1st Floor,
No. 17/18, Patullos Road,
Chennai - 600 002. ...Petitioner

-vs-

1. The Deputy Commissioner (C.T) - II Large, Tax payers Unit,
5th Floor, Dugar Towers,
No. 34, Marshall Road,
Chennai - 600 008.

2. Standard Chartered Bank,
19, Rajaji Salai,
Chennai - 600 001. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Order CST-32911/2008-09 dated 30.01.2014 passed by the First Respondent and the consequential Garnishee Order in TIN 33510640011 dated 07.10.2015 issued by the First Respondent to the Petitioner's banker, i.e., Standard Chartered Bank, Chennai - 600 001, and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar
For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes) (for R1)
No appearance (for R2)

W.P. No. 33879 of 2015:-

Mahindra & Mahindra Limited,
Rep. by Shri R K Sairam, Manager CI & S Accounts-Admn,
Mahindra Towers, 1st Floor,
No. 17/18, Patullos Road,
Chennai - 600 002. ...Petitioner

-vs-

1. The Deputy Commissioner (C.T) - II Large, Tax payers Unit,
5th Floor, Dugar Towers,
No. 34, Marshall Road,
Chennai - 600 008.

2. Standard Chartered Bank,
19, Rajaji Salai,
Chennai - 600 001. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Order CST-32911/2013-14 dated 16.09.2014 passed by the First Respondent and the consequential Garnishee Order in TIN 33510640011 dated 07.10.2015 issued by the First Respondent to the Petitioner's banker, i.e., Standard Chartered Bank, Chennai - 600 001, and quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar

For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes) (for R1)
No appearance (for R2)

COMMON ORDER
(through video conference)

Heard Mr. Joseph Prabakar, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the Respondents in W.P. No. 32257 of 2015 and the First Respondent in W.P. Nos. 33878 and 33879 of 2015 and perused the materials placed on record, apart from the pleadings of the parties.

2. The Deputy Commissioner - II, Large Tax Payers Unit, Chennai (hereinafter referred to as the 'Deputy Commissioner' for clarity and convenience) by Order No. CST - 32911/2008-2009 dated 30.01.2014 had determined the liability for the year 2008-2009 under the Central Sales Tax Act, 1956 (hereinafter referred to as the 'CST Act' for short), in respect of the Petitioner, who preferred an appeal in A.P. No. 24 of 2014 against that order under the CST Act, before the Joint Commissioner (CT) Appeals, Chennai (hereinafter referred to as the 'Joint Commissioner' for clarity and convenience).

3. The Deputy Commissioner by Order No. CST - 32911/2013-14 dated 16.09.2014 had determined the liability for the year 2013-2014 under the CST Act, in respect of the Petitioner, who preferred an appeal in A.P. No. 159 of 2014 against that order under the CST Act, before the Joint Commissioner.

4. The Joint Commissioner by order dated 06.03.2015 disposed the aforesaid appeals holding as follows:-

"13. In view of the aforestated discussion, it is very clear that the appellants have purchased "software", an intangible item, against Form-C declarations mis-representing that they were eligible to purchase the alleged "good" at the time of purchase and that it would be used in the manufacturing process and there by they have committed the offences under section 10 (b) and 10 (d) of the CST Act.

Therefore, I am of the view that the penalty levied by the Deputy Commissioner (CT)-II, Large Tax Payers Unit, under section 10-A of the Act in the impugned orders for the years 2008-09 and 2013-14 is sustainable in law. However, I have to interfere with the quantum of penalty in the impugned orders. The authority has levied a penalty of Rs. 2,82,49,200/- for the year 2008-09 (AP.24/2014) and Rs.5735625/- (AP.159/2014) being the 150% of the tax due on the purchase of "software". The authority has not given any findings on records as to the reasons which compelled him to levy maximum penalty. The discretion in fixing the quantum of penalty cannot be exercised arbitrarily but has to be reasonable and just as held by the Hon'ble Allahabad High Court in the case of Sai Electricals (P) Ltd, reported in 107 STC 1997. In view of the above position, I restrict the penalty levied in the impugned orders to 100% of the tax due to meet the ends of justice.

In fine the appeals are PARTLY MODIFIED and PARTLY DISMISSED."

The Petitioner has received a copy of that order on 13.05.2015 as per the Counter-Affidavit dated 05.11.2020 filed by the First Respondent.

5. In furtherance to the aforesaid order passed by the First Respondent, Garnishee Order No. TIN: 33510640011 dated 07.10.2015 was issued to Standard Chartered Bank, where the Petitioner was having its banking accounts.

6. At that stage, the Petitioner has on 08.10.2015 filed W.P. No. 32257 of 2015 challenging the common order dated 06.03.2015 in A.P. Nos. 24 and 159 of 2014 passed by the Joint Commissioner. The Petitioner has on 19.10.2015 filed W.P. No. 33878 of 2015 challenging Order No. CST – 32911/2008-2009 dated

30.01.2014 and the consequential Garnishee Order No. TIN: 33510640011 dated 07.10.2015 passed by the Deputy Commissioner, and W.P. No. 33879 of 2015 challenging Order No. CST - 32911/2013-2014 dated 16.09.2014 and the consequential Garnishee Order No. TIN: 33510640011 dated 07.10.2015 passed by the Deputy Commissioner.

7. It requires to be noticed here that the Petitioner was entitled to prefer appeal against the common order dated 06.03.2015 in A.P. Nos. 24 and 159 of 2014 passed by the Joint Commissioner under Section 58 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short), within a period of 60 days from the date of receipt before the Tamil Nadu Service Tax Appellate Tribunal (hereinafter referred to as the 'TNSTAT' for short) as mentioned in the note of that order itself, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the TNSTAT, but has instead filed W.P. No. 32257 of 2015 on 08.10.2015 challenging the order passed by the Joint Commissioner beyond the maximum limitation period of 120 days from the date of receipt of copy of that order.

8. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority.

9. The Order No. CST - 32911/2008-2009 dated 30.01.2014 and the Order No. CST - 32911/2013-2014 dated 16.09.2014 passed by the Deputy Commissioner have merged with the common order dated 06.03.2015 in A.P. Nos. 24 and 159 of 2014 passed by the Joint Commissioner and as such, the orders of the Deputy Commissioner cannot be independently challenged. As already noticed, the Writ Petition challenging the order of the Joint Commissioner has not been filed within the maximum limitation period of 120 days from the date of receipt of copy of that order. The Petitioner has not shown any infirmity in the Garnishee Order No. TIN: 33510640011 dated 07.10.2015 issued by the Deputy Commissioner to Standard Chartered Bank for the recovery of the tax liability determined against the Petitioner. Having regard to that legal position, it is not possible for this Court to express any view on the correctness or otherwise on the merits of the controversy involved in the matter.

In the result, the Writ Petitions, which cannot be entertained, are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vjt

To

1. The Joint Commissioner (C.T) Appeals, Chennai,
   3rd Floor, CT Building Annex,
   Greams Road,
   Chennai – 600 006.

2. The Deputy Commissioner (C.T) – II Large, Tax payers Unit,
   5th Floor, Dugar Towers,
   No. 34, Marshall Road,
   Chennai – 600 008.

3. The Branch Manager,
   Standard Chartered Bank,
   19, Rajaji Salai,
   Chennai – 600 001.

+2ccs to the Special Government Pleader, SR.No.37271,37272

W.P. Nos. 32257, 33878 and 33879 of 2015

CP(CO)
KKV/03/12/2020