IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM

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

W.P. No. 12985 of 2014
and
M.P. Nos. 1 and 2 of 2014

M/s. C/Moc Processors,
Rep. by its Proprietor - Gokul P.Deshpande,
No.7-B, Sapthagiri Apartments,
No. 83, TTK Road,
Alwarpet,
Chennai - 600 018. ...Petitioner

-vs-

1.The Joint Commissioner (CT),
Chennai (East) Division,
PAPJAM Buildings III Floor,
Greams Road,
Chennai - 600 006.

2.The Commercial Tax Officer,
Alwarpet Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent in Rc. No.1831/2012/A11/SR.156/2011 dated 18.03.2014 relating to the Assessment Year 2004-2005 under the TNGST Act, 1959 and quash the same as contrary to the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 and violative of the principles of natural justice and further direct the First Respondent to accept the Samadhan Application Form by issuing Certificate of Settlement.

For Petitioner : Mr. S.Rajasekar

For Respondents : Mr. R.Swarnavel
Government Advocate

O R D E R
(through video conference)

Heard Mr. S.Rajasekar, Learned Counsel for the Petitioner and Mr. R.Swarnavel, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner made an application dated 15.03.2012 under Section 5(1) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 (hereinafter referred to as 'the Act' for short) in respect of his assessment for the year 2004-2005 made in the Order No. TNGST/0820235/2004-2005 dated 27.07.2011 under the Tamil Nadu Value Added Tax Act, 2006, passed by the Second Respondent. The First Respondent, after scrutiny of the said application, in his notice in Rc. No. 1831/2012/A11 dated 07.03.2013 informed the Petitioner that the total amount that was required to be paid by the Petitioner was Rs. 1,29,245/-, whereas the sum of Rs. 1,14,210/- paid is less than 90% of the amount required to be paid along with the Samadhan application and in terms of Section 6(3) of the Act, it was proposed to summarily reject the same and the objections to that proposal were required to be filed within 15 days from the date on which the receipt of that notice. In response thereto, the Petitioner made payment dated 20.05.2013 of the differential sum of Rs. 15,035/- and by letter dated 20.05.2013, informed the same to the First Respondent, who thereafter passed the Order in Rc. No. 1831/2012/A11 dated 18.03.2014 acknowledging receipt of the said differential amount of Rs. 15,035/-, but held that as per the provisions under Section 6(3) of the Act, the application was rejected and the said amount of Rs. 15,035/- would be adjusted towards tax arrears. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said proceedings.

3. Learned Counsel for the Petitioner relying Rule 3(5) of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2011 (hereinafter referred to as 'the Rules for short) made in the exercise of powers conferred under Section 15(1) of the Act, contends that if the First Respondent had found any defect or omission in the application, he ought to have returned that application for rectification of the defect or for supplying of omission within 10 days from the date of its receipt, but could not straightaway reject it as not in compliance with the requirements. It is further submitted that when in response to the notice dated 07.03.2013, the First Respondent had promptly remitted the shortfall, it would have to be treated as rectification of the defect in terms of Rule 3(5) of the Rules, and the application ought to have been processed as per law.

4. The decision of this Court in Cheran Cements Limited -vs- Joint Commissioner (CT), (Order dated 03.09.2014 in W.P. (MD) No. 5638 of 2014 etc., batch) has been cited to buttress the proposition that it was not permissible for the First Respondent to reject the application, but should have instead taken into account the rectification of the defect and decided the application on merits. It would useful to extract the relevant passage in the said ruling, which reads as follows:-

> "28. In my view, the issue to be decided at the first instance is whether these applications were verified as per the provisions of Section 6(1). It is only thereafter the question of considering the further amount payable would arise under Section 6(2). This again is a procedural infirmity, which goes to the root of the matter. The designated authority at the time of verification of the correctness of the particulars in the applications filed by the petitioner, under Section 5(1), is entitled to return the applications for rectification of defects in terms of Rule 3 of the Rules. If this had been done, then the designated authority could have communicated the petitioner/applicant that the rates so determined by the petitioner itself is an erroneous calculation. This could have avoided the entire litigation in the matter. It is true that the statute does not specifically provide for an opportunity of personal hearing or issuance of show cause notice and the only place where the authority is statutorily bound to issue show-cause notice is while deciding a case and refusing to settle the arrears of tax, penalty or interest under Section 8 (2) of the Act. However, there is no statutory prohibition for the designated authority to call for particulars, hear the assessee or scrutiny of the books of accounts etc., while examining the applications under the provisions of Section 6. As noticed above, application has to be verified with reference to all relevant records and then only the correctness of determination done under Section 7 could be considered.

The same view has been reiterated in the another decision of this Court in M/s. King Crusher Industries -vs- The Joint Commissioner (CT) (Order dated 08.08.2019 in W.P. (MD). No. 5912 of 2012 etc., batch).

5. Having regard to the aforesaid submissions made, which deserves acceptance, it is not possible to uphold the faulty decision-making process adopted in rejecting the application made by the Petitioner and as such, the impugned order, which is vitiated, shall stand quashed. It shall be incumbent upon the

First Respondent to conduct enquiry affording opportunity of personal hearing to the Petitioner, deal with each of the contentions raised by the Petitioner following the prescribed procedure in consonance with the principles of natural justice, and taking into account the payment of differential amount as required, decide whether the Petitioner is entitled to the benefit of the scheme under the Act, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner by 31.03.2021 under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dm/kv

To

1.The Joint Commissioner (CT),
Chennai (East) Division,
PAPJAM Buildings III Floor,
Greams Road,
Chennai - 600 006.

2.The Commercial Tax Officer,
Alwarpet Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.

+1cc to Special Government Pleader(Taxes), S.R.No.41203

W.P. No. 12985 of 2014

SR II (CO)
KKV/23/12/2020