IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.2775, 2788, 2780, 2781,
2784, 2785 & 2787 of 2020

C.Vijay Kumar ..Petitioner

Vs.

1. The Joint Commissioner (North), ST
   Office of the Joint Commissioner of
   Commercial Tax,
   Thousand Lights, Chennai-6

2. The Asst. Commissioner of Commercial Tax,
   Office of the Asst. Commissioner,
   Harbour-V, Assessment Circle,
   Chennai-600001 ...Respondents

Prayer in W.P.No.2775 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus calling for the records relating to proceedings of the 1st respondent in R.C.No.6363/2019/B3-I, R.C.No.6363/2019/B3-V in WP.No.2788/2020, R.C.No.6363/2019/B3-II in WP.No.2780/2020, R.C.No.6363/2019/B3-III in WP.No.2781/2020, R.C.No.6363/2019/BC-VII in WP.No.2784/2020, R.C.No.6363/2019/BC-VI in WP.No.2785/2020, R.C.No.6363/2019/BC-VI in WP.No.2787/2020 dated 23.10.2019, quash the same and direct the respondents to receive the sum of Rs.4,83,262/-, Rs.5,61,420/- in WP.No.2788/2020, Rs.5,16,921/- in WP.No.2780/2020, Rs.8,06,783/- in WP.No.2781/2020, Rs.2,14,519/-in WP.No.2784/2020, Rs.8,55,292/- in WP.No.2785/2020, Rs.21,200/-in WP.No.2787/2020 from the petitioner towards the balance of amount payable for consideration and acceptance of the petitioner's application dated 25.08.2010 made under Sec.5(1) of Tamil Nadu Sales Tax (Settlement Arrears) Act, 2010 for the assessment year 1990-91, consequently issue Certificate under Section 8 of the Act.

For Petitioner : Mr.Manohara Sundaram

For Respondents : Mr.ANR Jayaprathap
Government Advocate

COMMON ORDER

The petitioner carries on business as a sole proprietary under the name of M/s.Annam Steels. It purchased a property being factory land, building and machinery at Survey No.73/1-and 73/11, Malathul Village, Thiruvallur Taluk and District brought to auction by Tamil Nadu Industrial Investment Corporation Ltd. (TIIC). The property was owned by one M/s.Srinivasa Chemical Pvt. Ltd. (assessee) which had availed financial assistance from TIIC. Since the assessee had defaulted in the repayment of the financial assistance received, the property was brought to sale by TIIC by tender-cum-open-auction on 01.12.2009 and the petitioner emerged as the successful bidder. The sale consideration was a sum of Rs.70 lakhs and sale certificate was issued to the petitioner on 10.08.2010. Possession of the movables and immovales have been taken by the petitioner.

2. Thereafter the petitioner approached the Sub-Registrar for registration of the sale deed. The request was denied on the ground that an encumbrance was registered on the property by the Commercial Taxes Department. The petitioner thus approached the Assistant Commissioner of Commercial Taxes/R2, seeking lifting of the attachment and was informed that the assessee was in arrears of tax, which would have to be settled for the lifting of the attachment to be considered.

3. The Settlement of Arrears Ordinance, 2010 was cited to the petitioner and the petitioner advised to avail of the said scheme for settling of the assessee's arrears. The petitioner thus, on the advise received, filed applications on 25.08.2010 in terms of Section 5(1) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2019 (Settlement Act) for the periods 1990-91 1991-92, 1992-93, 1993-94, 1994-95, 1995-96 (TNGST) and 1992-93 (CST). A total amount of Rs.27,46,304/- (Rs.27 lakhs approx) was paid.

4. It is the case of the petitioner that the entire process of filling the applications up, quantifying the arrears to be remitted and the determination of the arrears, was made by the officials in the Commercial Taxes Department. It is on the basis of the aforesaid computation made that the petitioner remitted the amount Rs.27 lakhs (approx). Correspondence thereafter ensued between the petitioner and the Commercial Taxes Department. When the petitioner was informed that the amount paid by him fell short of the amount statutorily required to be paid under the Scheme, the petitioner by letter dated 28.09.2019, expressed his willingness to remit the balance as well.

5. While this is so, the impugned orders dated 23.10.2019 have come to be passed wherein the applications filed by the petitioner have been rejected. The basis of the rejection is that the petitioner was not a 'dealer' as required under the Settlement Act and also that the amount paid did not satisfy the condition that 90% of the settlement amount has to be remitted along with the application. The 90% of computation in this case, is in relation to the amount due under all seven applications.

6. The petitioner has approached this Court challenging the above orders and raising various grounds in support thereof. I hardly need to advert to all the grounds filed for the reason that, at the hearing on 25.01.2021, I had directed learned revenue counsel to serve copies of the assessment orders upon the petitioner in order that one may obtain clarity on the demands raised. This was specifically for the reason that the records of assessment were not available with the petitioner since he is not the original defaulting assessee and just the purchaser of the property in question. The revenue had also not also indicated clearly either in the impugned order or in the communications leading to the passing of the impugned orders the details and break-up of the original tax, interest and penalty. Thus, it was felt that furnishing of the assessment orders would provide clarity as required.

7. On 25.01.2021, learned revenue counsel confirmed that orders of assessment were available only for two years i.e. 1994-95 and 1995-96 and efforts were ongoing to procure the remaining orders. Since the existence of valid orders of assessment passed under the provisions of the Act is a pre-condition for raising of a demand, time was granted to the Department to produce the other orders as well. On 18.03.2021, I have recorded that despite a final opportunity having been granted to the revenue to produce orders of assessment for the periods barring 1994-95 and 1995-96, no orders were produced and only more time had been sought for undertaking an extensive search. Costs were imposed and time as sought for was granted.

8. It is thus that the matter is listed today when also learned revenue counsel confirms unambiguously that no orders of assessment are available for the other years. Thus, I have no doubt in mind that orders of assessment have not been passed for any of the periods in question barring 1994-95 and 1995-96. It is for the reason that I do not see the necessity to advert to the other grounds raised by the petitioner as this one fact would be sufficient to decide the challenge to the impugned orders.

9. It is a sine qua non that a demand under revenue statute can be raised and enforced only if it is preceded by a valid order of assessment.In the present case, we are concerned only

with the demands raised under orders of assessment for the periods 1994-95 and 1995-96 in respect of which impugned orders dated 23.10.2019, quantify the demands at figures of Rs.11,85,987/- and Rs.1,18,292/- respectively and thus I proceed to determine the issue based on the aforesaid determination.

10. As far as the contention regarding the position that the present petitioner is not a dealer, Mr.Prathap would not pursue this line of argument and rightly so since the settlement in this case is not by the dealer but on behalf of the dealer in order to free the property from the clutches of the Department. There is no necessity to advert to this aspect of the matter any further. The only aspect that remains is whether the petitioner has remitted 90% of the arrears.

11. The quantification of the demand in this case has been made in line with the provisions of Section 6(3) read with Section 7(b) read with Section 8(1) of the Settlement Act. The provisions at play are extracted below for clarity:

> 6.(1)The designated authority shall verify the correctness of the particulars furnished in the application made under section 5 with reference to all relevant records and determine the amount payable at the rates specified in section 7.
>
> (3) If the applicant has not paid ninety per cent of the amount payable under section 7 along with the application, the designated authority shall summarily reject the application.
>
> 7.(b) Where it relates to arrears of tax, including any arrears of tax accrued due to non filing of declaration forms which was in excess of the tax admitted as per the return filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay one third of such arrears of tax pending collection on the date of application along with interest at six per cent per annum on the arrears of tax and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.
>
> 8.(1) The designated authority shall, on being satisfied about the payment of the amount determined under sub-section (1) of section 6, by an order, settle the arrears of tax, penalty or interest and issue a certificate in such form as may be prescribed, and thereupon, the applicant shall be discharged from his liability to make payment of the balance amount of such arrears of tax, penalty or

interest. Separate certificate shall be issued in respect of each application.

12. The petitioner falls within Section 7(b) of the Settlement Act and the 90% payable would have to be computed in line therewith as has been done by the designated authority. The sum total of the demand thus is of a amount of Rs.13,04,279/-. As against the amount of Rs.13,04,279/-, the petitioner has admittedly remitted a sum of Rs.27,46,034/-, which is more than double of the demand payable. Retaining the demands payable for the periods 1994-95 and 1995-96, of an amount of Rs.13,04,279, the balance shall be refunded to the petitioner within a period of six weeks from today. As a consequence of my order as aforesaid, the attachment of the property in question shall stand lifted forthwith.

13. These writ petitions are allowed in the above terms. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (North),
   Office of the Joint Commissioner of
   Commercial Tax,Thousand Lights, Chennai-6

2. The Asst. Commissioner of Commercial Tax,
   Office of the Asst. Commissioner,
   Harbour-V, Assessment Circle,Chennai-600001

+7cc to Mr.Amarnath, Advocate, S.R.No.26612 To26618

+1cc to the Special Government Pleader, S.R.No.26981

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MG(CO)

RGA(26/07/2021)