IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.833 of 2021
and
C.M.P.No.4755 of 2021

M/s.India Industrial Garment
Machines Private Limited,
(Now known as I.I.G.M Pvt Ltd)
Represented by its Managing Director,
No.43/18, 4th Street, Avinashi Road,
Tirupur - 641 603. ...Appellant/Petitioner

Vs

The Assistant Commissioner (ST)(FAC),
Tirupur North II Circle,
Tirupur. ...Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 07.10.2020 passed in W.P.No.35418 of 2019.

<u>WP.35418 of 2019:</u>
Prayer:Writ petition filed under article 226 of the Constitution of India praying writ of Certiorarified Mandamus to call for the records of the respondent in TNGST No.2303526/2004-05, quash the proceedings dated 12.12.2019 issued therein and further direct the respondent to pass a self assessment order for TNGST 2004-05 U/S-12-C of the TNGST Act.

For Appellant :Mr.V.Sundareswaran
For Respondent:Mr.Mohammed Shaffiq, Spl. GP(Tax)

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.V.Sundareswaran, learned counsel for the appellant and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the respondent.

2. This writ appeal by the writ petitioner is directed against the order dated 07.10.2020 made in W.P.No.35418 of 2019. The appellant filed the writ petition challenging the proceedings of the respondent dated 12.12.2019 demanding payment of tax and surcharge as well as penalty under the provisions of the Tamil Nadu General Sales Tax Act, 1956. The writ petition was dismissed by the learned Single Bench on the ground that the appellant had earlier challenged the assessment order by filing W.P.No.20302 of 2007 and the said writ petition was closed by order dated 20.09.2017 and therefore, the learned Single Bench opined that the appropriate remedy, which the appellant should have availed, is to seek for review of the order passed in the writ petition and a second writ petition challenging the demand would not be maintainable.

3. To a certain extent, we agree with the observation/finding rendered by the learned Single Bench, but we are inclined to take a different view on account of the fact that the earlier writ petition was not disposed of on merits but it was closed. The reason being that the appellant had the benefit of an interim order in that writ petition and it appears that the counsel who appeared in the writ petition was unable to contact the appellant and by then 10 years had lapsed and the writ petition was closed. Be that as it may, on account of an order passed by this Court, none should be prejudiced.

4. In the instant case, the writ petition was filed challenging the assessment order on several grounds as well as on the ground of violation of the principles of natural justice as the appellant had, while submitting their objections dated 05.03.2007 to the revision notice dated 12.01.2007, sought for one month time upto 05.04.2007 to enable them to give further objections. However, the Assessing Officer, by undated order signed on 30.05.2007, completed the assessment.

5. We find that the appellant has paid more than 50% of the tax, which has been demanded.

6. Furthermore, the appellant relied on the judgment of the Division Bench of this Court, to which one of us (TSSJ) was a party, in the case of Tvl.Iqbal Tools Syndicate and another Vs. State of Tamil Nadu rep. by its Joint Commissioner and another in T.C.Nos.6 yo 8 of 2016 dated 06.07.2020. The learned counsel for the appellant would submit that on merits, the judgment of the Division Bench would enure in their favour.

7. The learned Special Government Pleader appearing for the respondent would seek to sustain the order passed in the writ petition and would contend that the appellant has not been

diligent in prosecuting their rights and therefore, the learned Writ Court was right in not granting any relief.

8. From the facts that we have noted and from the records, we find that the appellant cannot be stated to be not diligent because at the first instance, they have challenged the assessment order as well as sought for a declaratory relief, however, some communication gap between the appellant and their counsel lead to the closure of the writ petition.

9. Therefore, this Court is inclined to grant one more opportunity to the appellant to go before the Assessing Officer to file their additional objections in order to enable the Assessing Officer to redo the assessment.

10. For the above reasons, the writ appeal is allowed and the matter is remanded back to the respondent for a fresh consideration. The appellant shall submit their objections within a period of 3 weeks from the date of receipt of a copy of this judgment and on receipt of the same, the respondent shall afford an opportunity of personal hearing to the appellant and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

hvk
To

The Assistant Commissioner (ST)(FAC),
Tirupur North II Circle,Tirupur.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.15913
+1cc to the Government Pleader, S.R.No.16132

W.A.No.833 of 2021
and
C.M.P.No.4755 of 2021

CA(CO)
RG.17.04.2021