IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.26388 OF 2012
AND
M.P.NO.1 OF 2012

M/s.Jeetendra Agencies
Rep.by its Proprietor S.Jeetendra
No.27, Mount Road
Coonoor 2. ...Petitioner

Vs

1. The Joint Commissioner (CT)
   Coimbatore Division,
   C.T.Building,
   Dr.Balasundaram Road,
   Coimbatore - 641 018.

2. The Assistant Commissioner (CT)(FAC)
   Coonoor Assessment Circle,
   Coonoor 2. ... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records on the file of first respondent in Roc.1412/2012/C1 dated 27.02.2012 and quash the same as illegal and direct the first respondent to accept the application in Form I filed by the petitioner and issue Certificate of Settlement to the petitioner as per the provisions of Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011.

For Petitioner : Mr.P.Prithvi Chopda
For M/s.T.Pramodkumar Chopda

For Respondents : Mr.V.Veluchamy
Government Advocate
[For R1 & R2]

O R D E R

The order dated 27.02.2012, rejecting the application filed by the petitioner under Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011 is under challenge in the present writ petition.

2. The petitioner was assessed to tax by the second respondent. The petitioner states that they filed an appeal before the First Appellate authority in A.P.541 of 1998 against the order dated 23.10.1998. The Appellate Assistant Commissioner (CT), Coonoor was pleased to pass final orders in the appeal in proceedings dated 11.02.1990 and allowed the appeal partly and remanded partly. Against the Appellate order, the Department filed further appeal before the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore in CTSA.162/99 and the said appeal was dismissed, confirming the order passed by the First Appellate authority. The second respondent had given effect to the order passed by the First Appellate authority in proceedings dated 12.08.2011. In the said order, the first respondent has noted incorrect date of assessment order namely 23.10.2008 instead of 23.10.1998 and incorrect appeal number as A.P.54/98 instead of A.P.541/98. Accordingly, the second respondent demanded NIL tax and penalty of Rs.35,489/-.

3. The Government of Tamil Nadu introduced Settlement Scheme viz., Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011 by Act 29/2011, providing for settlement of arrears of tax, penalty or interest pertaining to sales tax and therefore, the matters connected thereafter are incidental thereto. The petitioner made an application with reference to the penalty imposed. The said application was rejected by the Joint Commissioner (CT), Coimbatore in proceedings dated 27.02.2012, which is impugned in the present writ petition.

4. The impugned order states that the petitioner had filed application for assessment raised on 12.08.2011. As per the circular No.23/11 dated 03.11.2011, the scheme is applicable for the assessment years up to 2006-07 for which arrears of demand were raised prior to 01.08.2011. Therefore, the application is rejected.

5. The learned counsel for the petitioner relied on the Circular earlier issued by the Commissioner of Commercial Taxes on 23.01.2009. However, the said circular would not be applicable as the Principal Secretary/Commissioner of Commercial tax issued subsequent circular on 03.11.2011 in Circular No.23/11.

6. Relying on the said circular, the learned counsel for the petitioner reiterated that the assessment was of the year 1997-98 and the appeals were pending and the petitioner was continuously adjudicating the matter and therefore, the rejection order is not in consonance with the circulars issued and the petitioner is eligible to get the benefit under the Settlement Act.

7. This Court is of the considered opinion that the Settlement Act is a beneficial scheme introduced for a specific period. The scope of the scheme or the period of the scheme cannot be extended by the Courts. In the event of extending the period, the same will result in opening of Pandora's box and therefore, wherever the Government introduced a scheme for certain benefits, such scheme is to be implemented strictly in accordance with the terms and conditions as well as the period contemplated.

8. In the present case, there is a delay in filing an application and further, the cause for the application is the order dated 12.08.2011.

9. The counter filed by the respondent would reveal that Section 7(d) of the Settlement of Arrears Act 2011 stipulates that "where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten percent of the penalty and twenty five percent of interest, the balance of penalty and interest shall be waived". The petitioner filed an application under Sub-Section (1) of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011 in this office on 17.02.2012 in respect of arrears of penalty (i.e., penalty of Rs.35,489/- and paid Rs.3,550/- vide Cheque No.131361 dated 27.01.2012 as per Section 7(d) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act 2011. The Principal Secretary / Commissioner of Commercial Taxes, Chennai, issued a Circular in No.23/2011 (Drafting Cell-I/26408/2011) dated 03.11.2011 in which it is clearly intimated that the scheme is applicable for the assessment year upto 2006-07 for which arrears of demand were raised prior to 1.8.2011 under Tamil Nadu General Sales Tax Act, 1959, Tamil Nadu Sales Tax (Surcharge) Act 1971, Tamil Nadu Additional Sales Tax 1970 and CST Act 1956. Since the arrears in respect of the petitioner for the assessment year 1997-98 was raised only on 12.08.2011 after the cut off date of 01.08.2011, the petitioner's application filed under the settlement of Arrears Act 2011 was rejected as per Section 4 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act vide this office Ref.No.1412/2012/C1 dated 27.02.2012.

10. Perusal of the above counter affidavit, this Court is of an opinion that the cut off date was 01.08.2011 and the arrears in respect of the petitioner for the assessment year 1997-98 was raised only on 12.08.2011, wherein the competent authority passed an order on 12.08.2011.

11. This being the factum established, this Court cannot expand the scope of the Settlement Act beyond its terms and conditions as well as the period for which such benefits are granted. This being the factum established, the writ petitioner is not eligible to avail the benefit of the scheme and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT),
Coimbatore Division,
C.T.Building,
Dr.Balasundaram Road,
Coimbatore - 641 018.

2. The Assistant Commissioner (CT)(FAC),
Coonoor Assessment Circle,
Coonoor 2.

+1cc to M/s.T.Pramodkumar Chopda, Advocate, S.R.No.34263
+1cc to the Special Government Pleader Taxes, S.R.No.34700

W.P.NO.26388 OF 2012

SS(CO)
PBS/06/08/2021