IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6141 of 2013
and
M.P.No.1 of 2013

M/s.Shree Ganesh Ventures,
Represented by its Partner,
14A, Ennore High Road,
Thiruvottiyur, Chennai - 19. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
Chennai - 19. ... Respondent

Prayer:
Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the impugned proceedings of the Respondent in TNGST No.1101719/2002-2003 and quash the final notice dated 08.02.2013 and further direct the respondent to consider the petitioner's earlier objections dated 13.06.2008, 16.04.2010, 10.06.2010, 12.10.2011 and 29.02.2012 and conduct an enquiry as contemplated under Sections 54 and 54-A of the Tamil Nadu General Sales Tax Act, 1959 by granting reasonable opportunity to the petitioner as contemplated under Section 16(1)(a) of the TNGST Act before proceeding further with the assessment.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

The petitioner has challenged the impugned notice issued on 08.02.2013 for the Assessment Year 2002-2003. Earlier, order of Assessment was passed on 21.04.2003 which was sought to be revised under Section 16 of the TNGST Act which culminated an order dated 30.04/2007 revising the order of Assessment. The said Assessment was challenged by the petitioner in W.P.No.23265 of 2007.

2.Earlier a notice was issued under Section 16 of the TNGST Act, for the Assessment Year 2002-2003 it called upon the petitioner to produce the book of accounts for verification since despite issue of summons to the petitioner to produce the records, the petitioner has not produced the records. It propsed to rejection of the return filed by the petitioner as incorrect and incomplete and proposed re-determination of the total and taxable turnover of the petitioner for the year 2002-2003 under Section 12(2) of the TNGST Act, 1959. A revised order of assessment came to be passed on 30.04.2008. The said order was challenged by the petitioner in W.P.No.23265/2007. Assessment order dated 30.04.2008 was quashed by an order dated 21.01.2007. Thereafter fresh notice was issued to the petitioner and called upon the petitioner to furnish the details. The petitioner sent a reply. Thereafter, a notice was issued to the petitioner for imposing penalty under 16(2) of the TNGST Act on 06.03.2010. The petitioner sent reply to the same and thereafter once again notice dated 13.05.2010 was issued wherein the petitioner was called upon to produce the records/documents in support of its submission. The petitioner appears to have filed a reply on 10.06.2010 and 12.10.2011 and requested the respondent to withdraw the notice.

3.Pursuant to interim directions of this Court, reports have been filed by the respondent. As per the report steel scraps was purchased by the petitioner from the following dealers namely Jayabhwani Steel Enterprisis Ltd., Chennai, Shri Ganesh Steel Rolling Mills Ltd., Metal Worth Industries Ltd., Chennai, Tulsyan Nec Ltd., Chennai and Sabari Exim Private Ltd., Chennai which are stated to the dealers who have claimed to have effected second sale of steels to the petitioner and therefore they are not liable to pay tax.

4.It is further submitted that the other dealers namely Tulsyan Nec Ltd., has approached this Court in W.P.No.10975 of 2006 which is pending disposal.

5.Challenge to the proceedings seeking to revise the order of assessment made for the Assessment year 2002-2003 is primarily on the ground that the petitioner is being a second stage dealer of declared goods, was exempted from payment of tax in terms of section 4 of the TNGST Act read with 2^{nd} schedule of the TNGST Act as second sale of iron and steel goods are exempted from payment tax.

6.The challenge is primarily on the grounds the sales tax can be leived only on the fisrt sale of declared goods and since the dealer who sold the goods to the petitioner had effected second sale to the petitioner, the petitioner cannot be taxed. It is submitted that the purchase in the hands of the petitioner itself was exempted. It is therefore submitted that no tax can be demanded from the petitioner.

7.The learned counsel for the petitioner further submits that for the Assessment year 2002-2003, Sabari Exim Private Ltd., Chennai had sold only 1478.720 mts of goods as first sale by charging tax of 4% in terms of section 4 read with 2^{nd} schedule of the TNGST Act and sum of Rs.6,61,313/- was borne of tax by the petitioner. As far as other dealers are concerned they had effected second sales to the petitioner.

8.The learned counsel for the petitioner therefore submits that question of asking the petitioner to pay a tax on the sales effected by the petitioner merely on the ground the the petitioner had not produced or transfered documents to substantiate purchase cannot be sustained particularly in the light of the fact many of the delivery was taken with own vehicles from the selling dealers.

9.Defending the impugned proceedings, the learned counsel for the Commercial Tax Department submits that the four dealers from whom, the petitioner had allegedly purchased have indulged in circular trading in connivance with the petitioner and the petitioner along with these dealers. They have allegedly sold the declared goods by evading tax liability therefore in absence of requisite documents to substantiate the movement of goods, the petitiner was liable to pay tax as dealer who had sold tax declared goods for the first time in the State of Tamilnadu.

10.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

11.The proceedings started with the issue of notice under Section 16 of the TNGST to the petitioner on 21.12.2004. The said notice was reproduced below:

> The dealers did not produce their accounts for verification. Inspite of summons issued to them to produce their accounts for check on 17.12.2003 & 22.12.2003. Though in their letter dated 22.12.2003 they promised to

produce their records in 7 days, they did not do so. It is therefore evident that the dealers did not maintain, correct and complete accounts.

In view of the above, it is proposed to reject the return filed as incorrect and incomplete and to determine the total and taxable turnover of the dealers for the year 2002-2003 under Section 12(2) of the TNGST Act 1959.

12.From the reading of the said notice it is evident that there are no other documents in the hands of the respondent to reopen the assessment. The respondent also admits that the petitioner is a mere dealer and not a manufacturer of ''declared goods''. Therefore, the procurements in the hands of the petitioner could be made liable to tax as first sale under Section 4 read with 2nd schedule to the TNGST Act liability will arise only in the case where such declared goods are purchased from outside the State of Tamilnadu or are imported from abroad and sold locally for the first time in the State of Tamilnadu. There are no records to conclude that the goods were either imported goods and were sold for the first time by the petitioner in the State of Tamilnadu. The entire proceedings is predicated on the assumption that the petitioner had evaded the tax on the sale of steel scraps by purchasing them from the dealers and selling to the same dealers to evade tax.

13.Since, there are no records to conclude that the petitioner had either imported goods from out side the country and sold locally without payment of tax or at procured them from the dealer outside the State of Tamilnadu and effected local sale within the State.

14.Therefore the impugned notice seeking to revise the order of Assessment based on the assumption the petitioner would have evaded tax merely because the petitioner could not produce any transfer documents is not sufficient to justify the proposal to revise the Order of Assessment.

15.Therefore I do not find any merits in the proceedings initiated by the respondent to reopen the order of assessment.

16.Accordingly, this Writ petition filed by the petitioner is allowed. At the same time, liberty is given to the respondent to initiate the proceedings in accordance with law within a period of 30 days from the date of receipt of a copy of this order. If such proceedings are initiated within such time by the respondent based on cogent material, such proceeding shall be proceeded as if it were initiated within the limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
Chennai - 19.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.6541
+1cc to Spl Government Pleader(Taxes), S.R.No.6353

W.P.No.6141 of 2013
and
M.P.No.1 of 2013

SR-II(CO)
CB(03/06/2021)