IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6142 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.1101719/2003-2004 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 dated 08.02.2013 issued for the Assessment year 2003-2004. Earlier an assessment order dated 30.04.2007 came to be passed for the Assessment year 2003-2004 on 30.04.2007 based on a parallel proceedings against the petitioner seeking to reopen the Assessment for the Assessment year 2002-2003.

2.The Assessment order passed by the respondent on 30.04.2007 for the Assessment year 2003-2004 was challenged by the petitioner in W.P.No.23266 of 2007. Vide its order dated 21.08.2007, the said writ petition was allowed by this Court with the following observations:

> 10.At the stage of hearing of the writ petition, the learned counsel for the petitioner had submitted that it would suffice if the impugned order passed by the respondent in TNGST No.1101719/2003-2004, dated 30.04.2007, is set aside and the petitioner is given a fresh opportunity of hearing after he is permitted to submit the books of accounts and other relevant records before the final assessment of tax is made by the petitioner.

3.Thereafter, the notice was issued to the petitioner. The petitioner also filed objections to the same. The petitioner has now challenged the final order dated 08.02.2013 seeking to demand tax from the petitioner.

4.The learned counsel for the petitioner submitted that during the Assessment year 2003-2004 all the purchases were second sale in the hands of the petitioner and therefore whether the petitioner nor the dealers who sold the declared goods had claimed exemption under Section 4 of the said Act except for the purchases made from the Jayabalan enterprises on which the petitioner paid appropriate tax for a sum of RS.3256/- for 9.920 mts.

5.The learned counsel for the Respondent Mr.Hariharan, learned Additional Government Pleader (T) submits that the original order of Assessment had already been set aside by an order dated 21.08.2007 and therefore a fresh order of assessment has been passed in terms of the W.P.No.23266 of 2007. He therefore prays for dismissal of the writ petition. He submits that the petitioner had resorted to circular transactions and thereby evaded the payment of tax by claiming exemption under Section 4 of the TNGST Act read with 2nd schedule.

6.I have perused the impugned notice and the earlier order passed by the Assessing Officer namely the Respondent on 30.04.2007. The said order was set aside by an order of this Court on 21.08.2007. As per the said order, the respondent was required to pass a speaking order.

7.By another order in W.P.No.6141 of 2013, this Court has allowed the writ petition filed by the petitioner for the Assessment year 2002-2003 with the following observations:-

> 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:
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> > 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.
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> 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.

8.These observations are equally applicable for the facts of the present case. Since the respondent has already issued an order for reopening the Assessment as early as 03.06.2008 and on 30.04.2007, the respondent is directed to pass apporpriate orders in accordance with law in lines with the observations in

W.P.No.6141 of 2014.

9.Accordingly, this writ petitions stands disposed of with the above observations. 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.R.Rajkumar, Advocate, S.R.No.6542
+1cc to Spl Government Pleader(Taxes), S.R.No.6353

W.P.No.6142 of 2013
and
M.P.No.1 of 2013

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