IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6143 & 6144 of 2013
and
W.M.P.Nos.1 and 1 of 2013

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

Vs.

The Assistant Commissioner (CT),
Thiruvottiyur Assessment Circle,
Chennai - 19. ... Respondent in both W.Ps.

Prayer in W.P.No.6143 of 2013: 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 CST No.78229/2002-2003 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.

Prayer in W.P.No.6144 of 2013: 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 CST No.78229/2003-2004 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
(in both W.Ps.)

For Respondents : Mr.M.Hariharan,
(in both W.Ps) Additional Government Pleader (Tax)

C O M M O N O R D E R

By this Common order, both these writ petitions have taken up for final disposal.

2.In these writ petitions, the petitioner has challenged the notice issued by the respondent to pass a fresh order of Assessment under Section 16 of the TNGST Act has made applicable for the Assessment under the provisions of the CST Act, 1956 under Section 92 of the CST Act, 1956.

3.By an order passed in W.P.No.6141 of 2013 today, the orders are seeking to reopen the Assessment of the petitioner have been set aside for certain observations. These observations are reproduced below.

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

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.

4.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.

5.These writ petitions stands disposed. The respondent shall pass appropriate order within a period of three months from the date of receipt of a copy of this order. Needless to state, before passing such order, the petitioner shall also to be heard. No costs. Consequently, connected Miscellaneous Petitions are 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.

+2cc to Mr.P.Rajkumar, Advocate, S.R.No.6543, 6544
+1cc to Spl. Government Pleader(Taxes), S.R.No.6353

W.P.Nos.6143 & 6144 of 2013
and
W.M.P.Nos.1 and 1 of 2013

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