IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.35912 to 35915 of 2016
and
W.M.P.Nos.30851 to 30854 of 2016

Bhagavan Textiles (Defunct)
Rep.by Mr.V.Velusamy,
No.5, Alamapalayam,
Kumarapalayam (P.O)
Annur – 641 653. ..Petitioner in all W.Ps

vs

The Commercial Tax Officer,
Gandhipuram Circle,
Coimbatore. ..Respondents in all W.Ps

Prayer in W.P.No.35912 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records, relating to the proceedings of the respondent in TNGST No.2182553/2004-05 dated 29.08.2016, quash the same.

Prayer in W.P.No.35913 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records, relating to the proceedings of the respondent in TNGST No.2182553/2005-06 dated 29.08.2016, quash the same.
Prayer in W.P.No.35914 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records, relating to the proceedings of the respondent in CST.No.855084/2004-05 dated 29.08.2016, quash the same.

Prayer in W.P.No.35914 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the respondent in CST. No. 855084/2005-06 dated 29.8.2016 quash the same.

Prayer in W.P.No.35915 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records, relating to the proceedings of the respondent in CST.No.855084/2005-06 dated 29.08.2016, quash the same.

For Petitioner [in all W.Ps] : Mr.S.Raveekumar

For Respondents [in all W.Ps] : Mr.V.Veluchamy Government Advocate

COMMON ORDER

The assessment orders dated 29.08.2016 passed by the respondent are under challenge in the present writ petitions.

2. The petitioner was a registered dealer under the TNGST Act, 1959 and was mainly dealing in yarn and fabrics. Due to various reasons, the petitioner closed the business. The petitioner had been served with the Distrait proceedings on 14.05.2015 from the Assistant Commissioner, Avinashi Circle, under the Revenue Recovery Act, 1864, attaching the property belonging to the petitioner for recovering the tax dues. Challenging the said order dated 25.08.2015, the petitioner filed W.P.No.1305 of 2016 mainly on the ground that no opportunity was given to the writ petitioner before passing the order of attachment of his property. This Court, without adjudicating the issues on merits, passed an order on the sole ground that the petitioner is entitled for an opportunity before passing an order of attachment. The order was passed on 03.03.2016 and paragraph 4 of the order is extracted hereunder:

> "4. Indisputably the petitioner was not given an opportunity before passing the impugned order of attachment. In such view of the matter, the impugned order is liable to be set aside and the same is set aside. The second respondent shall pass an order afresh, after giving opportunity to the petitioner and in accordance with law. The petitioner is directed to appear before the second respondent, within a period of two weeks, from the date of receipt of a copy of the order, failing which, the impugned order will hold good. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

3. The second writ petition was filed by the petitioner in W.P.No.23473 of 2015, to quash the orders dated 14.05.2015 and 10.07.2015 passed by the first respondent and direct the second respondent to furnish the copies of the pre-assessment notices and assessment orders under the TNGST Act, 1959 and CST Act, 1956 for the Assessment Years 2004-05 and 2005-06 respectively. In the said writ petition, the petitioner requested for furnishing copies of pre-assessment notices and assessment orders. This Court passed an order, setting aside the Distrait orders on the basis of the subsequent developments and the following orders are passed:

> "4.Accordingly, the Writ Petition is allowed and the impugned distraint order is quashed and consequently the order of attachment is also quashed. It is left open to the Assessing Officer to frame assessment in terms of the direction issued in W.P.No.1305 of 2016 and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed."

4. Pursuant to the orders of this Court dated 03.03.2016, a notice was issued to the petitioner on 22.04.2016. The said notice admittedly is a fresh notice, issued pursuant to the directions of the Hon'ble High Court of Madras. The notice provides the details elaborately and it is contended that the case of the petitioner was finally assessed on a total and taxable turnover of Rs.66,58,300/- and Rs.66,58,300/- respectively for the year 2004-05 in this office order in TNGST No.2182553/2004-05 dated 28.02.2008 and order were served by affixture on 03.03.2008 and also sent by Post-under-Certificate of Posting. As per the order dated 28.02.2008, the following tax and penalty were raised

Tax	:	Rs.2,66,332.00
Penalty	:	Rs.3,99,498.00
Total	:	Rs.6,65,830.00

5. For realization of the tax arrears, the Assistant Commissioner (CT), Avinashi Circle, Avinashi has been addressed for taking action, in whose jurisdiction property of the surety lies at Annur, Avinashi Taluk. The said order dated 25.08.2015, the petitioner filed W.P.No.1305 of 2016 was set aside on the ground that no opportunity was given to the petitioner. Thus, the petitioner was aware of all these facts through the fresh notice issued in proceedings dated 22.04.2016 pursuant to the directions of this Court passed in W.P.No1305 of 2016 dated 03.03.2016.

6. The learned counsel for the petitioner mainly contended that the respondent has wrongly interpreted the directions of this Court and the order passed in W.P.No.1305 of 2016 is related to the order of attachment and therefore, the assessment orders now impugned in the present writ petitions are erroneous and not in consonance with the directions issued by this Court.

7. This Court is of the considered opinion that the order of attachment was set aside on the ground that no opportunity was provided to the writ petitioner. This Court directed the authorities to provide an opportunity and pass an order afresh. This will not disentitle the authorities to proceed with the matter on merits with reference to the tax arrears to be recovered from the assessee. This Court has not adjudicated the issues on merits. A simple direction was issued to provide an opportunity. Thus, for all purposes, the authorities competent are empowered to proceed with the actions in accordance with law and taking shelter on such direction issued in W.P.No.1305 of 2016, the petitioner cannot claim any exoneration from the liability regarding payment of arrears of tax.

8. By litigating the order of attachment, the tax arrears as per the original assessment order cannot be exempted nor the petitioner be exonerated from the liability of tax to be paid. Thus, this Court is of an opinion that the said order passed in W.P.No.1305 of 2016 is for the purpose of providing an opportunity to the writ petitioner regarding the order of attachment. However, the order of attachment was passed based on the original assessment order and the petitioner claims that they had not received the original assessment order and therefore, the respondent issued a fresh notice in proceedings dated 22.04.2016, stating all the facts including the facts regarding the final assessment made by the competent authority and the order of assessment dated 28.02.2008. Thus, the petitioner was well within his knowledge about the order dated 28.02.2008. It is stated in the notice that the said order was served by affixture on 03.03.2008 and sent by Post-under-Certificate of Posting. These facts are not disputed by producing any proof. Even in case, the assessment order was not served to the petitioner, when he came to know about the order through the fresh notice issued on 22.04.2016, the petitioner would have collected the said order and defended his case in the manner known to law. However, the orders impugned states that the petitioner had no intention to file specific objection or appear for personal hearing or to pay the admitted tax as per their legal due to the Government. The findings in the impugned orders reveal that the petitioner was not only evasive, he had no intention to defend the case by availing the opportunity provided by the authorities competent. Contrarily, he is

attempting to avoid payment of arrears of tax as demanded by filing litigation or other.

9. However, this Court is of an opinion that the assessment orders impugned now under challenge in the present writ petitions dated 29.08.2016 are appealable orders under the provisions of the Act. If at all, the petitioner is aggrieved, he is at liberty to prefer an appeal by raising all the legal grounds. However, this Court is not inclined to entertain the writ petitions on merits.

10. With this liberty, all the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Gandhipuram Circle,
Coimbatore.

+4ccs to Mr.S.Raveekumar, Advocate, S.R.No.29429 to 29432
+1cc to the Special Government Pleader(Taxes), S.R.No.29343

W.P.Nos.35912 to 35915 of 2016
and
W.M.P.Nos.30851 to 30854 of 2016

GSM(CO)
BE(26/07/2021)