IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-09-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP.NO.33765 OF 2014
AND
MP.NO.1 OF 2014

M/s.Montessa Pack
Represented by its Proprietrix M.Chandra,
No.81, Coral Merchant Street,
Mannady,
Chennai-600 001.

.. Petitioner

..vs..

1. The Joint Commissioner (CT),
   Chennai (East) Division,
   PAPJM Building, III Floor,
   Greams Road,
   Chennai-600 006.

2. The Commercial Tax Officer,
   Mannady (East) Assessment Circle,
   Now redesignated as
   The Assistant Commissioner (CT),
   Muthialpet Assessment Circle,
   199, Thambu Chetty Street,
   Chennai-600 001.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in proceedings Rc.2583/2012/A11, SR.SL.No.272/2011 dated 27.10.2014 and quash the same as illegal and direct the first respondent to accept the Samadhan Application in Form I and issue Certificate of Settlement to the petitioner as per the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

For Petitioner : Mr.T.Pramodkumar Chopda
For Respondents : Mr.V.Veluchamy,
Government Advocate.

# O R D E R

The order of rejection passed by the first respondent dated 27.10.2014, rejecting the application filed by the writ petitioner under the Samadhan Scheme, which is under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, is under challenge in the present writ petition.

2. The facts in nutshell, as narrated, are that the petitioner is an Assessee on the file of the second respondent. The second respondent revised the assessment order for the year 2000-2001 by its order dated 02.08.2006 and levied the tax. The petitioner filed the first appeal and the Appellate Deputy Commissioner (CT) II passed an order on 28.05.2009, modified the order and granted substantial relief to the petitioner. The respondent-Department filed further appeal before the Sales Tax Appellate Tribunal in STA.77/2010 and the said appeal was partly allowed on 09.04.2012.

3. Admittedly, the writ petitioner filed an application under the Samadhan Scheme of the year 2011 on 30.04.2012. The period in which the Scheme is to be implemented also has been enumerated in the said Act. Accordingly, the assessment years upto 2006-2007 for which assessment has been made prior to first day of August 2011 under the relevant Act and pending collection on the date of filing of application under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, the cases may be settled. Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 contemplates the rates applicable in determining amount payable.

4. The grievance of the petitioner is that the Appellate Authority granted substantial relief in favour of the writ petitioner and further appeal filed by the Department was partly allowed. However, those orders granting relief in favour of the petitioner were not taken into consideration for the purpose of determining the amount of tax to be paid under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. In other words, it is contended that the tax to be paid by the petitioner was erroneously calculated based on the original assessment order and without taking note of the further appellate orders as well as the Tribunal order passed. Such a course adopted by the first respondent is in violation of the provisions of Section 39A of the TNGST Act and further, contrary to the general principles of the Administrative Law.

5. The petitioner filed an application under the Samadhan Scheme of the year 2011 on 30.04.2012 and even prior to the date of application, the Appellate Authority as well as the Sales Tax

Appellate Tribunal passed orders and therefore those orders are also to be taken into consideration for the purpose of determining the tax to be paid by the writ petitioner. As per the writ petitioner, the excess taxes have already been paid and therefore, the writ petition is to be considered.

6. The learned Government Advocate, appearing on behalf of the respondents, states that the application itself is beyond the period of limitation and further, the tax payable was determined based on the assessment order in accordance with the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 and all these aspects were considered by the Joint Commissioner (CT) in his impugned order dated 27.10.2014. The application was rejected on the ground that the petitioner has not paid 90% of the amount determined under Section 7 of the Samadhan Act of 2011 along with the application and therefore, the Samadhan application is rejected under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

7. This Court is of the considered opinion that Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 contemplates the rate applicable in determining the amount payable. However, while determining the amount payable under Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, the Authorities Competent are bound to consider the original assessment order, appellate order and the order passed by the Sales Tax Appellate Tribunal in the appeal filed by the Department. Merely based on the assessment order, tax cannot be determined and all orders available as on the date of submission of the application by the petitioner must be considered for the purpose of determination of tax under the Scheme.

8. The petitioner has stated that substantial relief has been granted by the Appellate Authority and therefore, such relief granted must be taken into consideration, while calculating the tax due to be paid, but the said relief granted is not taken into consideration and therefore, the order of rejection is in violation of the provisions of the Act and is in violation of the principles of natural justice.

9. This Court is of the considered opinion that the respondents are bound to consider the original assessment order, first appellate order and the order passed by the Sales Tax Appellate Tribunal for the purpose of determining the tax payable under Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. However, such an exercise is to be done by the Authorities Competent and this Court cannot determine the tax to be paid based on the orders passed by the Authorities Competent. For this purpose, the matter is to be remitted back for fresh consideration and to consider the application filed by

the petitioner under the Samadhan Scheme of the year 2011.

10. Accordingly, the order impugned passed by the first respondent in proceedings Rc.2583/2012/A11, SR.SL.No.272/2011 dated 27.10.2014 is quashed and the matter is remanded back to the first respondent for fresh consideration, taking note of the appellate order as well as the order passed by the Tamil Nadu Sales Tax Appellate Tribunal for the purpose of determination of tax under Section 7 of the Samadhan Scheme Act of the year 2011 and accordingly, passed orders on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

11. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Joint Commissioner (CT),
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+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.44409
+1cc to the Special Government Pleader, S.R.No.44953

WP.No.33765 of 2014

VBM(CO)
CS/24/09/2021