BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.12453, 12458, 12465 & 12469 of 2020
and
WMP(MD)Nos.10657, 10661, 10662, 10663 of 2020

M/s.Vadivel Pyro Park,
Rep.by its Partner A.Vasantha Vikash ... Petitioner in all cases

Vs.

The Assistant Commissioner (ST)-II,
Sivakasi II Assessment Circle,
Commercial Tax Buildings,
Sivakasi. ... Respondent in all cases

Prayer in WP(MD)No.12453 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in assessment order issued by the respondent in TIN No.33805982272/2012-13 dated 10.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

Prayer in WP(MD)No.12458 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in assessment order issued by the respondent in CST No.835207/2012-13 dated 10.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

Prayer in WP(MD)No.12465 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in assessment order issued by the respondent in CST No.835207/2013-14 dated 10.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

Prayer in WP(MD)No.12469 of 2020 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in assessment order issued by the respondent in CST No.835207/2014-15 dated 10.02.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to proceed with the revision of assessment after the completion of the adjudication under Central Excise Act as per law.

in all cases :-

For Petitioner : Mr.K.Karunakar
For Respondents : Mr.S.Dayalan,
Government Advocate

COMMON ORDER

The petitioner in all these writ petitions is one and the same. There are three assessment years involved namely, 2012-13, 2013-14 and 2014-15. In respect of the assessment year 2012-13, assessments were shown both under TNVAT Act as well as Central Sales Tax Act, 1956. That is why, these writ petitions were filed. The petitioner is having their place of business at Anuppankulam, Sivakasi, Virudhungar District. The petitioner had registered themselves as a dealer with the respondent herein. The petitioner's business premises were inspected by the officials of the Central Excise Department on 07.08.2013. They seized CPUs/laptop boxes from the petitioner as well as from the office premises of the petitioner's sales tax consultant. The Central Excise authorities arrived at assessable value of the goods cleared for sale during the said years with the excise duty liable and taxable as follows :

2012-13

Assessable value of goods cleared/sold		5,03,14,944
Excise Duty	12%	60,37,793
Edu. Cess	2%	1,20,756
Sec Edu Cess	1%	60,378
Taxable turnover proposed under CT Acts		5,65,33,871
Taxable turnover reported in Form WW	VAT	18,89,281
Taxable turnover reported in Form WW	CST	1,06,44,747
Balance T.O. assessable at 14.5% under CST Act		4,39,99,843
Tax Due at 14.50%		**63,79,977**
Penalty Due at 150%		**95,69,966**
Total Due		**1,59,49,943**

2013-14		
		Total
Value of goods sold as per P & L A/c		62656414
Add: Trade Discount not passed on		37751982
Goods value		100408396
Add: Mahamai		583269
Add: Handling charges		1824545
Assessable value arrived at		102816210
Excise Duty	12%	12337945
Edu. Cess	2%	246759
Sec Edu Cess	1%	123379
Taxable Turnover proposed under CT Acts		115524294
Taxable Turnover reported in form WW	VAT	3104129
Taxable Turnover reported in form WW	CST	66040901
Balance T.O. assessable at 14.5%		46379264
Tax due at 14.50%		**6724993**
Penalty due at 150%		**10087490**
Total due		**16812483**

2014-15				
		Upto 28/02/15	In 03/15	Total
Goods value (excluding excise duty)		42898130	5916249	48814379
Add: Trade Discount not passed on		31168129	0	31168129
Basic Value		74066259	5916249	79982508
Add: Mahamai		975825	143831	1119656
Add: Handling charges		1664973	0	1664973
Assessable value (New)		76707057	6060080	82767137
ED at	12%	9204847	0	9204847
ED at	12.50%	0	757510	757510
Edu. Cess	2%	184097	0	184097
Sec Edu Cess	1%	92048	0	92048
Taxable Turnover proposed under CT Acts		86188049	6817590	93005639
Taxable Turnover reported	VAT	1578293	18414	1596707
Taxable Turnover reported	CST	47677229	6799176	54476405
Balance T.O. assessable at 14.5%		**36932527**	**0**	**36932527**
Tax due at 14.50%		**5355216**	**0**	**5355216**
Penalty due at 150%		**8032825**	**0**	**8032825**
Total due		**13388041**	**0**	**13388041**

2.The stand of the respondent is that the petitioner had reported lesser sales turn over and if the returns filed by the petitioner is compared with what was found out by the Central Excise Department, the turn over of the petitioner will have to be re-determined as follows :

2012-13

Total turnover determined	Rs.5,46,44,590/-
Taxable Turnover determined	Rs.5,46,44,590
Exempted turnover determined	Nil
Tax due	Rs.63,79,977/- as discussed above in relation to additionally proposed turnover
Penalty due	Rs.95,69,699/- as discussed above.
Total due	Rs.1,59,49,943/-

2013-14

Total turnover determined	Rs.11,24,20,165/-
Taxable Turnover determined	Rs.11,24,20,165/-
Exempted turnover determined	Nil
Tax due	Rs.67,24,993/- as discussed above in relation to additionally proposed turnover
Penalty due	Rs.1,00,87,490/- as discussed above.
Total due	Rs.1,68,12,483/-

2014-15

Total turnover determined	Rs.9,14,08,932/-
Taxable Turnover determined	Rs.9,14,08,932/-
Exempted turnover determined	Nil
Tax due	Rs.53,55,216/- as discussed above in relation to additionally proposed turnover
Penalty due	Rs.80,32,825/- as discussed above.
Total due	Rs.1,33,88,041/-

3.The respondent initially issued pre-revision notice dated 02.01.2020. The petitioner received the same and offered their objections. After considering the same and after hearing personally the petitioner in person, the impugned revision orders came to be passed.

4.The orders passed by the respondent are put to challenge in these writ petitions. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavits filed in support of the writ petitions. His core argument is that the respondent could not have mechanically adopted the approach of the Central Excise Department. The respondent was obliged to conduct an independent enquiry and thereafter re-determined the petitioner's turn over as well as tax liability. He placed heavy reliance on the decision reported in ***(2012) 54 VST 383 (Mad) (State of Tamil Nadu vs. Sayar Jewellery).*** The Hon'ble Division Bench of this Court in the said decision held as follows :

> "5.In so far as it relates to the substantial question of law (1) is concerned, it is the contention of the Revenue that the assessee having given a statement before the Central Excise Department cannot be expected to give a different statement before the authorities under the TNGST Act, and therefore, the conduct of the assessee would amount to approbate and reprobate, by relying on the decision in Yousuff Radio v. The Board of Revenue (CT) - MANU/TN/0528/1979 : 43 STC 525.
>
> 6.We are not able to accept the said contention. There is no provision under the TNGST Act to enable the authority under the Act to adopt any other procedure followed by the Central Excise Department. In the absence of any enquiry conducted by the authority under the TNGST, in our view, the Revenue has not done its duty in a proper manner. Therefore, the question of approbation and reprobation does not arise. Accordingly, substantial question of law (1) is answered in favour of the assessee and as against the Revenue."

He also drew my attention to the decision of the Hon'ble Gujarat High Court reported in ***2012 (12) TMI 955 (Futura Ceramics Pvt Limited and another vs. State of Gujarath and others***).

5.Per contra, the learned Government Advocate submitted that the impugned orders do not warrant any interference. He took me through the averments set out in the counter affidavits.

6.I carefully considered the rival contentions and went through the materials on record. The decision of the Hon'ble Gujarat High Court relied on by the petitioner's counsel can very well be easily distinguished. That was a case where based on the show cause notice issued by the Central Excise Department, the Sales Tax department initiated revision proceedings against the assessee. The Hon'ble Judge noted that the show cause notice proceedings have not culminated into any final order against the assessee and wondered what would happen to the order of reassessment if ultimately the Excise Department were to drop the proceedings without levying any duty or penalty from the petitioner. Such is not the case here. The respondent has initiated action only after the excise department passed final orders. Again, no exception can be taken to the proposition laid down by the Hon'ble Division Bench of this Court in ***State of Tamil Nadu vs. Sayar Jewellery*** case. The question is what was laid down by the Hon'ble Division Bench. The Hon'ble Division Bench had only laid down that the sales tax authority must independently arrive at a finding and that it cannot mechanically copy the findings of the excise department. In the case on hand, the excise department had passed final orders against the petitioner herein after a detailed enquiry. The petitioner had filed statutory appeals questioning them before the Hon'ble CESTAT. As on date, the petitioner has not been able to obtain any interim order of stay. Mere pendency of the CESTAT appeals cannot by itself whittle down the effect of the findings set out in the final orders passed by the Central Excise Department. At the same time, question arises as to what would happen if the CESTAT chooses to allow the appeals filed by the petitioner herein. Interest of justice therefore requires that this Court requests the CESTAT, Chennai to dispose of the appeals filed by the petitioner herein within a period of five months from the date of receipt of copy of this order. Till then, the impugned orders shall be kept in abeyance. It is for the petitioner to obtain final order or interim order at the hands of CESTAT in the meanwhile. If the petitioner fails to obtain any interim order within a period of five months or fails to succeed in getting the appeals allowed, the orders impugned in these writ petitions will spring back to life and thereafter it will be enforced. Of course, from the date of such springing back to life, the petitioner can definitely workout his other remedies in the manner known to law. The period during which these writ petitions were pending and the period during which the impugned orders are kept in abeyance will of course be excluded in the matter of computing limitation.

7.In this view of the matter, these writ petitions are disposed of in the following manner :

(a)The CESTAT, Chennai Bench is requested to dispose of the appeals filed by the petitioner on merits and in accordance with law within a period of five months from the date of receipt of copy of this order.

b)If the appeals filed by the petitioner cannot be disposed of within the said period, it is for the petitioner to obtain an interim order of stay of the final orders passed by the Central Excise Department in the meanwhile.

c)If the petitioner fails to obtain any interim order or the appeals are not allowed in favour of the petitioner, the orders impugned in these writ petitions will spring back to life.

d)The orders impugned in these writ petitions will be kept in abeyance for a period of six months. If the petitioner succeeds in obtaining interim order before the CESTAT, Chennai Bench in the pending appeals, then, the orders impugned in the writ petition will continue to remain unenforceable till the disposal of the appeal by CESTAT. After the disposal of the appeals by CESTAT, Chennai Bench whether they are allowed or dismissed, the petitioner can renew his challenge to the impugned orders in the manner known to law. All the contentions of the petitioner are left open.

(e)The period of pendency of the writ petitions and the period of six months mentioned above will be excluded for computing limitation if the occasion arises.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: 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 (ST)-II,
Sivakasi II Assessment Circle,
Commercial Tax Buildings,Sivakasi.

+1 CC to M/s.GP (SR-3274[F] dated 04/02/2021)

W.P.(MD)Nos.12453, 12458, 12465 & 12469 of 2020
03.02.2021

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TR(19.04.2021) 7P 3C