BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.3687, 3688 and 3689 of 2016
and
W.M.P.(MD)Nos.3321, 3322 and 3323 of 2016

M/s.Anar Textiles,
Represented by its Partner,
M.Chellappan ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT)(FAC),
Karur (West) Assessment Circle,
Karur. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the case from the file of the respondent herein, quash the impugned ex-parte order of assessment in TNGST No.389148/1991-92, 1992-93 and 1993-94 dated 14.01.2016 for the TNGST assessment year 1991-92, 1992-93, 1993-94.

(In all W.Ps)
For Petitioner : Mrs.Lakshmi Sriram

For Respondent : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner was a dealer with the respondent under the Tamil Nadu General Sales Tax Act, 1959. The petitioner has filed these three writ petitions in respect of the assessment years 1991-92, 1992-93 and 1993-94. The petitioner had earlier suffered certain adverse orders of assessment. The petitioner had received pre-revision notices for the assessment years 1991-92 and 1992-93. Challenging the same, the petitioner filed W.P.Nos.4915 and 4916 of 1995. The petitioner also received pre-assessment notice for the assessment year 1993-94. Challenging the same, the petitioner filed W.P.No.20771 of 1994. Vide order dated 18.12.2000, W.P.(MD) Nos.4915 and 4916 of 1995 were dismissed but the petitioner was granted 15 days time to file objections to the pre-revision notices. It is stated that third writ petition was also disposed of on the very same lines. Availing the liberty granted by this Court, the petitioner offered their objections as early as on 05.01.2001. The stand of the petitioner is that nothing was heard from the respondent for more than 15 years. The respondent took the stand that they will not act based on the certified order copy produced by the petitioner. The respondent insisted that they should independently receive the order copy from the Registry of the High Court and only thereafter, they would take further action. This further action was not taken immediately. Only in November 2015, the respondent issued the notice dated 30.11.2015 calling upon the petitioner to appear for personal hearing. The petitioner vide letter dated 23.12.2015 requested the respondent to grant them 15 days extra time from 23.12.2015 to draft their reply to the notice dated 30.11.2015. The petitioner also sent one more letter dated 31.12.2015, in which a request for personal hearing was reiterated. Without responding to those twin requests, the impugned orders dated 14.01.2016 came to be passed levying tax, additional sales tax and penalty on the petitioner. Questioning the same, these writ petitions have been filed.

3.The prayer in these writ petitions is opposed by the respondent. The respondent has filed a detailed counter affidavit. The learned Government Advocate took me through the averments set out therein. The learned Government Advocate would point out that even though the petitioner was granted an opportunity of personal hearing, they did not avail the same but instead adopted delaying tactics. It is also submitted that the petitioner can rather avail the appellate remedy available under the statute and that the petitioner is not justified in directly invoking the writ jurisdiction.

4.The learned counsel for the petitioner primarily contended that the impugned orders deserve to be quashed on the ground that they have been passed after a unreasonable delay. She would point out that the petitioner had lodged their objections in the first week of January 2001 itself. On that, there is no dispute. For full 15 years, the respondent did not respond. Only in November 2015, fresh notices were issued. When the petitioner sought time, without dealing with the said request, the impugned orders were straightaway passed on ex-parte basis. The learned counsel would place reliance on the decision of the Hon'ble Supreme Court reported in ***(2007) 10 V.S.T. 180 (SC) (State of Punjab and Others Vs. Bhatinada District Cooperative Milk Private Union Limited).*** The Hon'ble Supreme Court in the aforesaid decision specifically held that even if no period of limitation has been prescribed, the statutory authority must exercise its jurisdiction within a reasonable period. What shall be the reasonable period would depend upon the nature of the statute, rights, liabilities and other relevant factors. The learned counsel would also point out that as per the relevant provision obtaining in Tamil Nadu General Sales Tax Act, the assessee is expected to maintain the records only for a period of five years and that therefore, the assessee cannot be vexed with an adverse order after a gap of more than 15 years.

5.No doubt, the contention advanced by the learned counsel for the petitioner is persuasive. But I am not able to accept the same. This is the second round of litigation. The petitioner had earlier filed writ petitions before this Court. The said writ petitions were dismissed but however, liberty was given to the petitioner to file objections. In terms of the liberty granted by this Court, the petitioner had rightly filed the objections before the respondent. It is true that the respondent did not initiate further proceedings. But nothing prevented the petitioner from filing a Writ of Mandamus for directing the assessing authority to expedite the proceedings. In any event, the petitioner having already filed writ petitions and thereafter, having lodged objections, was fully aware that the issue is very much alive. Therefore, the petitioner cannot fall back on the provision in Tamil Nadu General Sales Tax Act, which states that it is enough if the assessee maintains the record for five years. It is not as if in respect of an assessment for the first time after 15 years, the authorities had initiated action. Therefore, the petitioner was expected to maintain the records in this case.

6.Be that as it may, there is force in the petitioner's counsel's contention that when the authority woke up after a slumber of 15 years, the petitioner also should be given reasonable opportunity to collect the relevant materials and prepare their response. The petitioner had received the notice for the very first time only on 30.11.2015. The petitioner gave a request vide letters dated 23.12.2015 and 31.12.2015, seeking further time. It is specifically stated that this request for extension of time was not at all dealt with by the assessing authority and straightaway the impugned orders were passed. It has been held time and again by this Court that when a request for adjournment is made, it should be specifically dealt with. If the authority was not inclined to grant time, the authority should tell the assessee then and there, so that the assessee could have availed some other remedy. Instead, the assessee was straightaway visited with the impugned orders, which was passed on ex-parte basis. Therefore, on this ground, I quash the orders impugned in the writ petitions. The matters are remitted to the file of the respondent. The respondent will issue fresh personal hearing notice to the petitioner. I make it clear that the petitioner ought to attend the personal hearing as and when it is notified. The petitioner shall not ask for any further adjournment. Thereafter, it is open to the respondent to pass order afresh in accordance with law.

7.These writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 (CT)(FAC),
Karur (West) Assessment Circle,Karur.

+1 CC to M/s.SPL GP (SR-9177[F] dated 05/03/2021)
+3 CC to M/s.LAKSHMI SRIRAM, Advocate (SR-9887[F] dated 10/03/2021)

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SMV(CO)
TR(05.05.2021) 4P 6C