IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.182 OF 2022
AND
W.M.P.NOS.218 & 219 OF 2022

(Through Video Conferencing)

S.A.John Basha,
Proprietor of Deepam Kerosene Agencies (Defunct),
No.18, Peruvai Street,
Sathyamangalam, Erode District. ...Petitioner

Vs.

The State Tax Officer,
Sathyamagalam, Erode District. ...Respondent

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records on the file of the Respondent in its impugned proceedings made in TNGST-2980700/ 2002-2003 dated 27.12.2018 and the consequential rejection proceedings in Roc.No.694/A3/2021-TNGST No.2980700/2002-2003 dated 26.11.2021 quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

Mr.N.R.R.Arun Natarajan, learned Special Government Pleader takes notice on behalf of the respondent.

2. In this writ petition, the petitioner has not only challenged the impugned Assessment Order dated 27.12.2018 but also the consequential order passed by the respondent under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the TNGST Act).

3. This is the third round of litigation before this Court.

4. Earlier, the petitioner had filed W.P.No.8768 of 2004 for a mandamus to forbear the respondents from levying and collecting 1% resale tax under Section 3H of the Tamil Nadu Government Sales Tax on the total turnover of the petitioner on the Super Kerosene Oil for the Assessment Year 2002-2003. However, the writ petition was withdrawn by the petitioner on 09.12.2015. Pursuant to which, an Assessment Order dated 27.12.2018 came to be passed by the respondent.

5. The said order was challenged by the petitioner in W.P.No.10423 of 2019. The said writ petition was disposed by an order dated 25.10.2019 with the following observations:-

> "4. Therefore, without expressing any view on the merits of the matter, this Writ Petition is disposed of only by granting liberty to the petitioner to file an appeal against the order impugned in this writ petition within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same shall be considered by the concerned Appellate Authority on its own merits and appropriate orders shall be filed in accordance with law, without reference to the period of limitation. No costs. Consequenly, connected miscellaneous petitions are closed."

6. Instead of filing an appeal in time, the petitioner decided to file an appeal petition before the Appellate Commissioner on 11.02.2021 belatedly and therefore by a miscellaneous order dated 04.03.2021. The Appellate Deputy Commissioner (ST) dismissed the appeal petition stating that the appeal petition was hopelessly time barred under Section 31 of the TNGST Act, 1959. Thereafter, the petitioner has filed an application/petition under Section 55 of the TNGST Act, 1959 on 12.07.2021 which led to issuance of a notice dated 21.09.2021 by the respondent wherein, the petitioner was called upon to show cause as to why the application/petition filed under Section 55 should not be rejected.

7. The petitioner also appears to have replied to the same by a reply dated 11.10.2021 which has culminated in the impugned order of the first respondent.

8. Assailing the impugned order of the first respondent dated 27.12.2018 and 26.11.2021, the learned counsel for the petitioner submits that the Original Assessment Order though correctly records that the petitioner was liable to pay resale tax and surcharge on Super Kerosene Oil for the last ten days of the Assessment Year, in the calculation, the respondent has

demanded resale tax and surcharge on the entire turnover and therefore there is error apparent on the face of record.

9. The learned counsel for the petitioner further submits that merely because the writ petition filed by the petitioner in W.P.No.10423 of 2019 was disposed and that the appeal petition was also dismissed itself does not mean that the application/petition under Section 55 of the TNGST Act will not be maintainable.

10. It is submitted that the impugned order holding that the respondent has no power to entertain any petition with regard to subject matter as the matter has been already decided by the Appellate Forum as well as the Hon'ble High Court is without any basis inasmuch this Court while passing the order dated 25.10.2019 in W.P.No.10423 of 2019 and the Appellate Commissioner while dismissing the appeal petition by a miscellaneous order dated 04.03.2021 have not applied mind on merits.

11. It is submitted that in the former case, the writ petition was merely disposed without expressing any opinion on merits while passing the latter miscellaneous order dated 04.03.2021, the Appellate Commissioner dismissed the appeal as time barred.

12. The learned counsel for the petitioner has drawn specific reference to Section 55(3-A) of the TNGST Act which reads as under:-

> "Section 55.Power to rectify any error apparent on the face of the record:
>
> Section 55 (3-A): The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision."

13. Opposing the prayer, the learned Special Government Pleader for the respondent submits that though the order has not discussed on merits, it is submitted that as per the decision of the Hon'ble Division Bench of this Court in M/s.Malladi Drugs and Pharmaceuticals Limited, Represented by its General Manager Vs The Assistant Commissioner (CT) and others, passed in W.P.Nos.38722 to 38726 of 2015 dated 17.12.2015, there is no scope for rectification. It is submitted that the Court has explained the scope of Section 84 of the TNVAT Act, 2006 which is pari materia with Section 55 of the TNGST Act, 1959.

14. The learned Special Government Pleader for the respondent submits that there cannot be an "error apparent on

the face of record" if requires a detailed argument. It is therefore submitted that the application filed by the petitioner belatedly under Section 55 of the TNGST Act on 12.07.2021 was without any basis.

15. That apart, the learned Special Government Pleader for the respondent submits that the petitioner is prolonging the longevity of the dispute for the Assessment Order 2002-2003 by filing an appeal belatedly contrary to the time given vide order passed by this Court in W.P.No.10423 of 2019 on 25.10.2019.

16. It is further submitted that the appeal was filed long after the order was passed and exposing of time granted by this Court and therefore the conduct of the petitioner should be taken note. It is submitted that the issues has also been decided by the Appellate Commissioner by rejecting the appeal filed by the petitioner belatedly.

17. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent. I have also perused the impugned Assessment Order passed by the first respondent on 27.12.2018 after the petitioner had withdrawn W.P.No.8768 of 2004 and order of this Court in W.P.No.10423 of 2019 on 25.10.2019.

18. The order of this Court in W.P.No.10423 of 2019 dated 25.10.2019 and the order passed by the Appellate Commissioner on 04.03.2021 has not discussed the issue on merits. Merely because, the appeal was rejected and the writ petition was disposed as above does not mean that the application filed under Section 55 of the TNGST Act can be dismissed without any discussion.

19. The petitioner appears to have made out a case for rectification. This aspect has not been discussed in the impugned order. The impugned order passed by the respondent has disposed the rectification application filed by the petitioner with the following observations:-

> "In view of the above, it was very clear that once the assessment order was passed and against which writ petition was filed and disposed of with direction to get remedy with the Appellate Forum and the appeal petition which heard as miscellaneous petition was dismissed as not admissible, the dealer should approach the next appropriate higher forum as prescribed. Further, the Assessing Officer has no power to entertain any of the petitions with regard to the subject matter that had already been decided by the Appellate Forum as well as the Hon'ble High Court and no such specific direction to the Assessing Officer exists in this case."

20. There is order on merits. Considering the same, I am inclined to interfere by quashing the second mentioned order dated 26.11.2021 purportedly passed in the exercise of power conferred under Section 55 of the TNGST Act, 1959 and remit the case back to the respondent to pass a speaking order on merits as to whether indeed application under Section 55 of the TNGST Act, 1959 is maintainable on facts.

21. The respondent shall consider the Government Order and the clarification be referred to in the impugned Assessment Order dated 27.12.2018 and whether the impact of the same has been given to the petitioner while computing the tax liability. If there is an error in the computation of tax as has been stated by the petitioner, the respondent shall pass appropriate orders and grant relief to the petitioner. The respondent shall examine whether the computation of resale tax and surcharge thereon is correct or not.

22. This writ petition stands disposed by directing the respondent to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

arb/rgm

To

The State Tax Officer,
Sathyamagalam,
Erode District.

+1cc to M/s.R.Hemalatha, Advocate Sr.No.1930

+1cc to the Special Government Pleader (Taxes) Sr.No.2400

W.P.No.182 of 2022
and
W.M.P.Nos.218 & 219 of 2022

PCH(CO)
RVM(07/02/2022)