BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	21.03.2022
Pronounced On	13.06.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.(MD)Nos.4972, 4973, 4974 and 4975 of 2017
and
W.M.P.(MD).Nos.4006, 4007, 4008 and 4009 of 2017

Tvl.P.E.Industries,
Represented by its Partner,
N.Chockalingam, aged about 48 years,
S/o.Nallusamy,
No.3-A, Annai Street, Noolpattarai Road,
Seeman Nagar,
Karuppayurani Post,
Madurai - 625 020. ... Petitioner in all W.Ps.

Vs.

1. The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai - 625 020. ... Respondent in all W.Ps.

Prayer in W.P.No.4972 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN. 33024882236/2011-2012 dated 09.12.2016 and quash the same.

Prayer in W.P.No.4973 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN. 33024882236/2012-2013 dated 09.12.2016 and quash the same.

Prayer in W.P.No.4974 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN. 33024882236/2013-2014 dated 09.12.2016 and quash the same.

Prayer in W.P.No.4975 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN. 33024882236/2014-2015 dated 09.12.2016 and quash the same.

For Petitioner : Mr.B.Rooban
(in all W.Ps.)
For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
(in all W.Ps.)

COMMON ORDER

By this common order all the four writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the following Assessment Orders as detailed below:

Sl. No.	Date	Assessment Year	Escape Turn Over	Tax Due
1.	09.12.2016	2011-2012	Rs. 76,96,614/-	Rs.11,50,962/-
2.	09.12.2016	2012-2013	Rs.1,31,17,750/-	Rs.18,25,458/-
3.	09.12.2016	2013-2014	Rs.1,19,63,765/-	Rs.20,90,023/-
4.	09.12.2016	2014-2015	Rs.1,41,38,184/-	Rs.13,89,692/-

The second respondent/The Assistant Commissioner (CT) has also imposed penalty against the petitioner under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006.

3. It is submitted that the part of the demand confirmed by the second respondent in the impugned orders are covered by the decisions of this High Court in the case of **Tvl.Bharath Traders, Rep. by its Partner N.Venkatesh** Vs. **The Commissioner of Commercial Taxes, Chennai and Others** in W.P.(MD).No.15103 of 2015 etc., batch dated 30.08.2019 and partly by another decision of this Court in the case of **M/s.Ran India Steels (P) Ltd., Rep. by its Managing Director R.Radha** Vs. **The Commercial Tax Officer (FAC), Tiruchengode** in W.P.No.2174 of 2014 dated 04.12.2019.

4. It is therefore submitted that to that extent the impugned orders passed by the second respondent are not sustainable. As far as the other heads are concerned, the learned counsel for the petitioner prays that the issue can be remitted back to the respondents to pass a speaking order, as the demand is based on alleged sales suppression arrived, based on the purchase of machines between the returns filed under the Tamil Nadu Value Added Tax Act, 2006 and the respective Profit and Loss Account of the petitioners for the respective Assessment Years.

5. These Writ Petitions are opposed by the learned Additional Government Pleader for the respondents stating that the petitioner has an alternative effective remedy.

6. It is submitted that even, if the order issued is partly covered in favour of the petitioner in terms of the aforesaid decisions of this Court referred to *supra*, it is for the petitioner to file appropriate statutory appeal before the Appellate Authority under the Provisions of the Tamil Nadu Value Added Tax Act, 2006 and redress its grievances and therefore these writ petitions are liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8. The petitioner cannot convert the jurisdiction of this Court under Article 226 of the Constitution of India as that of the Appellate Commissioner under Section 51 of the Tamil Nadu Value Added Tax Act, 2006, notwithstanding the fact that some of the issues may have been settled in favour of the petitioner in the light of the orders cited by the learned counsel for the petitioner.

9. It is for the petitioner to take advantage of these decisions by citing the same before the Appellate Authority by filing a Statutory Appeal. Further, several technical issues arise for consideration which are best left to the Appellate Authority including this Court in its Appellate Jurisdiction to consider the same. It would be improper to bypass the jurisdiction of the Appellate Authority to invoking the jurisdiction of this Court under Article 222 of the Constitution of India, especially when issues relating to both fact and law requires to be settled.

10. Article 222 of the Constitution of India should not be abused merely because statute mandates pre-deposit at the time of filing of an appeal notwithstanding the fact that the amount adjudged may be high. In appropriate cases, the Court may even consider the partial relaxation to mitigate the circumstances so that the Appellate Authority can take up the case subject to the

assessee pre-depositing a portion of the mandatory deposit as is contemplated under the Provisions of the Tamil Nadu Value Added Tax Act, 2006.

11. However, it would not be appropriate to entertain these writ petitions to quash the Impugned Assessment Orders, where alternate efficacious remedy exist. In the light of the above, I am inclined to dismiss this Writ Petition by giving liberty to the petitioner to file Statutory Appeal against the respective Impugned Assessment Orders within a period of thirty days from the date of receipt of a copy of this order.

12. If such appeals are filed before the Appellate Authority within such time together with pre-deposit, the Appellate Authority shall number the appeal and pass appropriate orders on merits after considering the submissions of the learned counsel for the petitioner. Needless to state that before passing such that, the Appellate Commissioner shall also consider the applicability of the decision of this Court in **Tvl.Bharath Traders, Rep. by its Partner N.Venkatesh** Vs. **The Commissioner of Commercial Taxes, Chennai and Others** in W.P.(MD).No.15103 of 2015 etc., batch and **M/s.Ran India Steels (P) Ltd., Rep. by its Managing Director R.Radha** Vs. **The Commercial Tax Officer (FAC), Tiruchengode** in W.P.No.2174 of 2014 also.

13. These Writ Petitions stand disposed of in terms of the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Commissioner of Commercial Taxes,
   Office of the Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (CT),
   Tallakulam Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Road,
   Madurai - 625 020.

+4 CC to M/s.B. ROOBAN, Advocate (SR-25641 TO 25644[F] dated 14/06/2022)

W.P.(MD)Nos.4972, 4973, 4974 and 4975 of 2017
and
W.M.P.(MD).Nos.4006, 4007, 4008 and 4009 of 2017
13.06.2022

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