IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28111 of 2023
and
W.M.P.No.27626 of 2023

TVL.Renaatus Procon Private Limited,
Represented by its Chairman and Managing Director,
Selvasundaram.P.
156, Mullamparappu,
N.G.Palayam Post,
Erode District - 638 115. ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Kodumudi Assessment Circle,
2nd Floor, Commercial Taxes Building,
R.D.O. Office Campus,
North Pradhakshanam Road,
Karur – 639 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in CST : 1045295/2014-2015 dated 01.06.2023 and quash the same as being without its jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondent.

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

3. Earlier, the petitioner had challenged the decision of the Advance Ruling Authority (Authority for Clarification and Advance Ruling) passed in ACAAR No.135/2014-2015 (Acts Cell-II/7028/2015) dated 02.09.2015 before this Court in W.P.No.30528 of 2015.

4. By an order dated 29.09.2015, the order of the Authority for Clarification and Advance Ruling passed under Section 48A of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 was quashed by this Court with certain directions.

5. Relevant portion of the order reads as under:-

> ***"9. In view of the fact that the petitioner was not provided with an opportunity of personal hearing before passing the impugned order, coupled with the fact that the respondent department has not followed the statutory provisions provided under the Act as stated supra and also in view of the Judgment of this Court reported in [2014] 68 VST 494 (Mad) referred supra, the impugned order is liable to be set aside and the matter has to be remitted back to the 1st respondent for passing orders afresh.***
>
> ***10. In the result, the impugned order of the 1st respondent dated 02.09.2015 is set aside and the matter is remitted back to the 1st respondent for passing appropriate orders, after affording an opportunity of personal hearing to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.***
>
> ***The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed."***

6. The said Authority for Clarification and Advance Ruling thereafter passed a fresh order on 26.04.2019 in ACAAR No.135/2015-2016, by which time, the TNVAT Act, 2006 stood subsumed into the respective GST enactments viz., respective GST Acts, 2017.

7. The petitioner therefore challenged the aforesaid order dated 26.04.2019 before this Court in W.P.No.31103 of 2019.

8. At the time of arguments, the petitioner conceded that under the respective GST enactments, the Authority for Clarification and Advance Ruling does not exist in the form in which it did under the TNVAT Act, 2006 and hence, the application filed by the petitioner itself does not survive. This submission made by the petitioner stood recorded, although the petitioner had challenged the said order dated 26.04.2019. In terms of Section 48A(3) of the TNVAT Act, 2006, the order of the said authority binding on the applicant namely the petitioner in this case.

9. Taking note of the submissions made by the petitioner, this Court however passed a final order in W.P.No.31103 of 2019 on 09.09.2022 with the following directions:-

> ***"4. The sum and substance of the petitioner's submissions is that, with the enacting of the TNGST Act, 2018, the Authority for Clarification and Advance Ruling does not exist in the form in which it did under the TNVAT Act and hence, the application filed by the petitioner itself does not survive. Thus, the impugned order is assailed on this basis.***
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> ***5. In the counter filed the respondent, they rely on the provisions of Section 174 of the TNGST Act to take aid from the saving provisions. However, in view of the stand taken by the petitioner, I need hardly address the defence taken by the respondents, as I accede to the submissions made by the petitioner, concluding that, both the application and the impugned order would survive no longer.***

> ***6. It is brought to my notice that the assessments for various years have been kept pending by the Authority awaiting disposal of this writ petition and in light of an interim order passed by this Court on 04.11.2019 directing the respondents to maintain status quo. This order has been interpreted by the respondents to mean that all assessment should be kept pending. Seeing as the assessments relate to the periods 2014-15, 2017-18, a period of 16 weeks is granted to the parties to complete all pending assessments in accordance with law.***
>
> ***7. Accordingly, this writ petition stands disposed in the above terms. No Costs. Connected miscellaneous petition is closed."***

10. Pursuant to the above, the Assessing Officer has issued a fresh Show Cause Notice on 17.04.2023 for the Assessment Year 2014-2015. The petitioner has replied to the same and had sought for certain time on 22.05.2023 for furnishing further documents to substantiate the case. On the same date, i.e., on 22.05.2023, the Assessing Officer namely the respondent herein granted time till 31.05.2023 and proceeded to pass the impugned Assessment Order on the following date i.e., on 01.06.2023 for the Assessment year 2014-2015.

11. It is the case of the petitioner that there is a procedural infraction inasmuch as the petitioner submitted additional submission on 09.06.2023 and which was also received by the respondent on 12.06.2023. It is further

submitted that the respondent has predated the order knowing fully well that the petitioner has a very good case on merits.

12. That apart, the learned counsel for the petitioner would submit that the issue is squarely covered in favour of the petitioner in terms of the Himachal Pradesh Government Act in its Notification No.EXN-F(10)-5/2015 Shimla - 171 002, Dated 14th January, 2016.

13. It is submitted that the petitioner is indeed engaged in manufacturing all kind of bricks including fly ash which is classified under the Entry No.22(a) of Part-B of First Schedule to the TNVAT Act, 2006 instead, the respondent has foisted residuary Entry No.15 of Part-C of the First Schedule to the TNVAT Act, 2006 by treating the bricks manufactured by the petitioner as cement products of all kinds including Cement Tiles, Pavement Blocks etc., excluding Cement Jolley, Doors, Window Frames made of RCC and RCC Pipes. It is further submitted that the petitioner was forced to approach the Advance Ruling Authority vide Application ACAAR No.135/2014-2015 dated 02.09.2015 as the petitioner was being subjected to unnecessary audit and unjust demand.

14. The learned counsel for the petitioner also submitted that the said products was liable to tax at 3% on the sale of Bricks manufactured out of fly ash with effect from 27.03.2002 by G.O.Ms.No.33 CT (B2) dated 27.03.2002 - Notification No. II(1)/CT/19(b-19)/2002 – Gazette dated 27.03.2002 under the Tamil Nadu General Sales Tax Act, 1959.

15. The learned Additional Government Pleader for the respondent on the other hand would submit that the decision of the Authority for Clarification and Advance Ruling under Section 48A(3) of the TNVAT Act, 2006 is binding and therefore, the subsequent order that was passed on 26.04.2019 cannot be ignored. It is submitted that, this Court while passing order dated 09.09.2022, this Court has concluded that both the application and the impugned order would survive no longer and therefore, this Court had directed the respondent to complete the assessment within a period of sixteen weeks. It is also submitted that pursuant to the above, Show Cause Notice dated 17.04.2023 was issued and more than five adjournments had been sought for by the petitioner.

16. The learned Additional Government Pleader for the respondent further submitted that the Assessing Officer has come to an independent conclusion on facts and therefore, on this count also, this writ petition is not maintainable. It is further submitted the matter relates to classification and therefore, it is better left to be decided by the authorities under the hierarchy appellate body under the TNVAT Act, 2006.

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

18. The petitioner has invited adverse orders from the aforesaid authority namely the Authority for Clarification and Advance Ruling earlier on 02.09.2015 and thereafter on 26.04.2019. Though the latter order of this Court dated 09.09.2022 has been diluted by the previous order of this Court dated 29.09.2015 based on the submission of the learned counsel for the petitioner and though the above decision was given in favour of the petitioner, the fact remains that the Assessing Officer has applied mind while passing an order determining the classification which was earlier confirmed by the Authority for

Clarification and Advance Ruling by order dated 02.09.2015 and thereafter, once again, after the order of the Authority for Clarification and Advance Ruling dated 26.04.2019 was set aside by this Court vide its Order dated 09.09.2022 in W.P.No.31103 of 2019.

19. The issues relating to classification are best left to be decided by the authorities under the hierarchy appellate body of the TNVAT Act, 2006 and in case, the petitioner is so aggrieved, the petitioner has to approach only the Appellate Commissioner and thereafter the Tribunal which is the ultimate fact finding authority.

20. There is no scope for interference with the impugned order under Article 226 of the Constitution of India particularly, when the order discusses the issue relating to classification.

21. In view of the above discussion, this writ petition is liable to be dismissed. However, liberty is given to the petitioner to file a Statutory Appeal before the Appellate Commissioner under Section 51 of the TNVAT Act, 2006 within a period of thirty days from the date of receipt of a copy of this order

subject to payment of 25% of the amount confirmed vide the impugned Assessment Order.

22. On such compliance and filing of the appeal, the Appellate Commissioner shall dispose the appeal on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order.

23. It is made clear, all the issues relating to classification are left open to be canvassed before the Appellate Commissioner.

24. This Writ Petition is dismissed with the above observations and liberty. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

25.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

mac/arb

Note: Registry is directed to return the originals of the impugned order to the counsel for the petitioner to facilitate the petitioner to file statutory appeal.

To

The Assistant Commissioner (ST)(FAC),
Kodumudi Assessment Circle,
2nd Floor, Commercial Taxes Building,
R.D.O. Office Campus,
North Pradhakshanam Road,
Karur – 639 001.

C.SARAVANAN, J.

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