IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

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

W.P.Nos.28459, 28464, 28467 & 28485 of 2023
and
W.M.P.Nos.28003, 28004, 28007, 28008, 28011,
28012, 28032 & 28033 of 2023

1. M/s.Pioneer Leder Tex (P) Ltd.,
Represented by its Director,
No.196, SIDCO Industrial Estate,
SIPCOT, Ranipet – 632 403. ... Petitioner in W.P.Nos.28459, 28464 & 28467 of 2023

2. M/s.Abdul Careem,
No.196, SIDCO Industrial Estate,
SIPCOT, Ranipet – 632 403. ... Petitioner in W.P.No.28485 of 2023

Vs.

1. The Assistant Commissioner (ST),
Ranipet. ... Respondent in W.P.No.28459, 28464 & 28467 of 2023

2. The Branch Manager,
State Bank of India,
BHEL Branch,
Mukundarayapuram,
Ranipet. ... Respondent in W.P.No.28485 of 2023

Prayer in W.P.No.28459 of 2023: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in CST.376259/2013-2014 and to quash the order dated 29.12.2021 passed therein in so far as it relates to the levy of penalty under Section 10-A of the CST Act.

Prayer in W.P.No.28464 of 2023: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in CST.376259/2014-2015 and to quash the order dated 29.12.2021 passed therein in so far as it relates to the levy of penalty under Section 10-A of the CST Act.

Prayer in W.P.No.28467 of 2023: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in CST.376259/2015-2016 and to quash the order dated 29.12.2021 passed therein in so far as it relates to the levy of penalty under Section 10-A of the CST Act.

Prayer in W.P.No.28485 of 2023: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the first respondent in his proceedings in R.C.A2/847/2022 and to quash the bank attachment notice dated 28.07.2023.

For Petitioners	: P.V.Sudakar (in all W.Ps.)
For Respondent	: Mrs.K.Vasanthamala Government Advocate (in W.P.No.28459, 28464 & 28467 of 2023)
For 1st Respondent	: Mr.C.Harsharaj (in W.P.No.28485 of 2023)

COMMON ORDER

By this common order, all these writ petitions are being disposed of.

2.The petitioner has challenged the impugned Assessment order dated 29.12.2021, in so far as it seeks to levy of penalty on the petitioner under Section 10 of the CST Act, 1956 for the Assessment years 2013-2014 to 2015-2016.

3.The challenge to the impugned Assessment orders dated 29.12.2021 is that the notice that preceded the aforesaid Assessment orders dated 14.03.2017 did not propose penalty under Section 10A of the CST Act, 1956. As far as the challenge to the bank attachment order seeking to attach the personal bank account of the Director of the petitioner is concerned, it is submitted that there is no machinery prescribed under the said Act, which empowers the respondents to attach the Bank Account of a director. Unless the company itself has been wound up under Section 18 of the CST Act, 1956, question of attaching the Bank Account of a director cannot be proposed.

4.That apart, it is submitted that there was a bonafide mistake on the part of the petitioner in procuring wet blue against Form “H” and that as against the same proportionate duty has been already paid. Therefore, imposition of cumulative penalty of Rs.1,13,58,687/- for these Assessment years was unwarranted. The petitioner was allowed to adjust the electronic credit ledger in Form GST DRC-03 on 28.12.2022 for a sum of Rs.72,55,558/- and that the balance penalty that is payable is only Rs.40,95,161/-.

5.It is further submitted that from the aforesaid balance of Rs.40,95,161/- a sum of Rs.4,01,500/- has been also recovered from the personal bank account of the Director of the petitioner which is now subject matter of W.P.No.28485 of 2023.

6.The learned counsel for the petitioner submits that one opportunity may be granted to the petitioner to challenge the Assessment orders as also the penalty proceedings as the orders imposing penalty did not proceed to levy penalty under Section 27(4) of the TNVAT Act, 2006 as made applicable to the provisions of the CST Act, 1956.

7.The learned counsel for the petitioner would further submit that the Director of the petitioner has been dealing with health issues particularly heart ailment and has been taking treatment even before since 2019 and owing to Covid – 19 and therefore one opportunity may be given to the petitioner.

8.It is the specific case of the petitioner is that if at all, penalty is imposable only under Section 27(4) of the TNVAT Act, 2017. It is the further case of the petitioner as there was no proposal for imposing penalty under Section 27(4) of the TNVAT Act, 2017 or for imposing penalty under Section 10-A in the notice that preceded the respective Assessment orders, imposition of penalty.

9.It is submitted that the petitioner has a fair chance to succeed before the Appellate Commissioner. Hence, prays for quashing the impugned order or in the alternative a liberty to approach the Appellate Authority.

10.The writ petition filed by the petitioner in the respective petitions are opposed by the learned Government Advocate for the respondents on the ground that the petitioner has slept over rights for not filing Statutory Appeal in time. A specific reference is made to the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

11.It is submitted that the petitioners' has accepted the Assessments order dated 29.12.2021 and has also paid the proportionate tax as also paid a sum of Rs.72,55,558/- vide Form GST DRC-03 on 28.12.2022. Hence, it is too late in the day that the petitioner to ask to any interference with the impugned order at this distant point of time. That apart, it is also submitted that the petitioner has also accepted the mistakes which stands recorded in the impugned orders.

12.It is further submitted that the petitioner had purchased wet blue against Form "H" from the local dealer as well as from the interstate dealers. But the dealers have exported finished leather only after manufacturing process in violation of Section 5(3) of the CST Act, 1956. It is submitted that misuse of declaration form H attracts penalty at 150% under Section 10-A under CST Act, 1956.

13.Specifically, the learned Government Advocate for the respondents submitted that under Section 10-A of the CST Act, 1956, the imposition of penalty is in lieu of prosecution. The penalty has been imposed by giving the petitioner reprieved from not being prosecuted. Hence, there is no scope for interference.

14.The learned Government Advocate for the respondents submits that writ petitions should be dismissed with exemplary costs on account of latches and in view of the decision of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo**

Smith Kline Consumer Health Care Limited, 2020 SCC Online SC 440.

15.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

16.The petitioner in W.P.Nos.28459, 28464 and 28467 of 2023 has approached this Court belatedly against the impugned Assessment orders dated 29.12.2021 levying penalty under Section 10-A of the CST Act, 1956. It is noticed that in the respective Assessment orders, there is an admission on the part of the petitioner and the petitioner has paid the tax. The tax due is nil. Only penalty of 150% imposed under Section 10-A of the CST Act, 1956, remains to be paid.

17.The submissions of the petitioner on merits consideration by the Appellate Authority, considering the fact that the director of the petitioner in W.P.Nos.28459, 28464 and 28467 of 2023 was dealing with health issues right from 2019 and on account of Covid - 19 pandemic.

18.Although the petitioner has filed these writ petitions belatedly, the fact remains that there is a substantial compliance in as much as almost a sum of Rs.72,55,558/- has been recovered as against the total penalty of Rs.1,13,58,687/-.

19.Considering the fact that there is a delay, the petitioner shall also deposit another sum of Rs.5,00,000/- over and above within a period of four weeks from the date of receipt of a copy of this order.

20.Considering the above, Court is inclined to dispose these writ petitions by allowing the petitioner to file a Statutory Appeal before the Appellate Commissioner under Section 51 of the TNVAT Act, 2016 within a period of thirty days from the date of receipt of a copy of this order. Subject to petitioner also depositing another sum of Rs.5,00,000/- over and above already recovered/paid.

21. It is made clear that if the petitioner fails to deposit a sum of Rs.5,00,000/- as ordered above, this order will stand automatically revoked, in which case, the respondents are at liberty to proceed against the petitioner in accordance with law.

22.These writ petitions stand disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

29.09.2023

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
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To

1. The Assistant Commissioner (ST),
   Ranipet.

2. The Branch Manager,
   State Bank of India,
   BHEL Branch,
   Mukundarayapuram,
   Ranipet.

C.SARAVANAN, J.

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