IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3506 and 3512 of 2022
and
W.M.P.Nos.3644, 3646, 3652 and 3654 of 2022

Tvl.Mahalakshmi Sago Factory,
Represented by its Partner
R.Selvakumar,
39, Trichy Branch Road,
Annathanapatty, Salem – 2. ... Petitioner in both W.Ps

Vs.

The Assistant Commissioner (ST),
Gugai Assessment Circle,
Salem. ... Respondent in both W.Ps

Prayer in W.P.No.3506 of 2022: 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 TNGST. 2720095/**2005-2006** dated 14.12.2021 and quash the same as being contrary to the direction issued in W.P.Nos.13749, 13750 and 13936 of 2009 dated 19.08.2009 and also contrary to that of the principles laid down by this Court in Judgment rendered in 2020 (374) E.L.T. 15 (MAD) (Mr.J.SheikParith Vs. 1. The Commissioner of Customs (Seaport-Exports) Customs House, Rajaji Salai, Chennai – 600 001 and another).

Prayer in W.P.No.3512 of 2022: 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 TNGST. 2720095/**2006-2007** dated 14.12.2021 and quash the same as being contrary to the direction issued in W.P.Nos.13749, 13750 and 13936 of 2009 dated 19.08.2009 and also contrary to that of the principles laid down by this Court in Judgment rendered in 2020 (374) E.L.T. 15 (MAD) (Mr.J.SheikParith Vs. 1. The Commissioner of Customs (Seaport-Exports) Customs House, Rajaji Salai, Chennai – 600 001 and another).

For Petitioner (In both W.Ps)	:	Mr.P.Rajavelu
For Respondent (In both W.Ps)	:	Mr.V.Prasanth Kiran Government Advocate

COMMON ORDER

By this Common Order, both the Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the Impugned Notices both dated 14.12.2021 issued by the respondent pursuant to Order passed by this Court in W.P.Nos.13749, 13750 and 13936 of 2009 on 19.08.2009.

3. It appears that the petitioner had earlier suffered adverse Assessment Orders after notices were issued to the petitioner. The Impugned adverse Assessment Orders were passed by the respondent based on the documents recovered by the Enforcement Wing of the Commercial Tax Department from the premises of the petitioner on 07.12.2006.

4. The adverse Assessment Orders were successfully challenged by the petitioner by way of remand in the above mentioned Writ Petitions. Pursuant to the aforesaid Order, the respondent was required to finalize the assessment within a period of 6 weeks. The petitioner was also asked to produce the records and registers within a period of 2 weeks from the date of receipt of the copy of the order.

5. Neither the petitioner nor the respondent complied with the above directions in Paragraph 5 of the aforesaid Order dated 19.08.2009. The Impugned Notices have now been issued after a lapse of almost 11 years. The explanation that is forthcoming from the Commercial Tax Department is that the jurisdiction of the petitioner had changed and therefore the records were

misplaced and therefore the notice could not be issued earlier.

6. It is noticed that during the interregnum, the Commercial Tax Department was also handicapped as the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 was also subsumed into the Tamil Nadu General Sales Tax (TNGST) Act, 2017 and there were large scale transfers of the Officers.

7. The fact remains that the petitioner has also not cooperated with the Commercial Tax Department and therefore the petitioner cannot complain that the Commercial Tax Department has not passed the Order within a period of 6 weeks from the date of the Order on 19.08.2009. That apart, an assessment cannot abate unless Final Orders are passed on merits. There are several mitigating factors which have intervened including the outbreak of Covid-19 pandemic which would have also handicapped the Department to pass Order earlier.

8. I do not find any reasons to interfere with the assessment proceedings pursuant to the Impugned Notices both dated 14.12.2021. Therefore, these Writ Petitions are liable to be dismissed.

9. At this stage, the learned counsel for the petitioner submits that the documents requisitioned by the petitioner have not been furnished to the petitioner and therefore the petitioner has also not given a proper reply.

10. It is open for the petitioner to request the Commercial Tax Department to furnish the required documents.

11. In any event, the petitioner shall file an interim reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall endeavour to pass a Final order on merits, as expeditiously as possible, preferably, within a period of 6 months from the date of receipt of a copy of this Order after furnishing the documents to the petitioner.

12. These Writ Petitions are dismissed with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

06.12.2024

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

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C.SARAVANAN, J.

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To

The Assistant Commissioner (ST),
Gugai Assessment Circle,
Salem.

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