IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

O.S.A. Nos.86 and 99 of 2023 and
C.M.P.Nos.10708, 10709, 12136, 13259, 19766, 19771 of 2023
and
W.P.Nos.19222, 19324, 19327, 19329, 19332, 19227, 19240, 19246, 19330, 19333, 19336, 19338, 19341, 19344, 19347 and 19351 of 2023 and
W.M.P.Nos.18604, 18608, 18611, 18612, 18614,18615, 18620, 18622, 18623, 18624, 18626, 18627, 18453, 18454, 18456, 18457, 18472, 18474, 18478, 18480, 18585, 18586, 18592, 18593, 18594, 18595, 18597, 18598, 18599, 18600, 18601 and 18602 of 2023

O.S.A. Nos.86 and 99 of 2023:

The Assistant Commissioner (ST) (FAC),
Formerly Sankari Assessment Circle,
Now Kumarapalayam Assessment Circle (After Bifurcation)
Sankari, Salem District. .. Appellant in O.S.A.No.86 of 2023

The Commissioner Tax Officer,
Sankari Circle,
Erode. .. Appellant in O.S.A.No.99 of 2023

Vs.

1.The Official Liquidator,
High Court, Madras,
As the Liquidator of
M/s. Tan India Ltd., (In Liquidation)
No.29, Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai 600 001.

2. P.Elango ..Respondents in both O.S.A's

(R2 impleaded vide order of this Court dated 24.07.2023 made in C.M.P.Nos.13262 and 13259 of 2023 in O.S.A.Nos.86 and 99 of 2023

Common Prayer: Original Side Appeals filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent praying to set aside the fair and decreetal orders dated 13.04.2023 and 09.02.2023 passed in Company Application Nos.221 of 2023 and 416 of 2022 respectively in Company Petition No.243 of 1997.

Writ Petition No.19222 of 2023

P.Elango
Ex-Managing Director
M/s.Tan India Ltd (in Liquidation)
No.117, Kalaimagal Street
Komarapalayam – 638 183
Namakkal District ... Petitioner

vs.

1.The Joint Commissioner (ST)
Salem Division,
Salem.

2.The Assistant Commissioner (ST) (FAC)
Kumarapalayam Assessment circle
Sankari, Salem

3.The Official Liquidator
Office of the Official Liquidator
Corporate Bhavan 2nd Floor
No.29, Rajaji Salai
Chennai 600 001. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records on the files of the first respondent's impugned proceedings in TNGST No.776282/1990-91 dated 03.06.2023 and the consequential impugned order passed by second respondent in TNGST No.776282/1990-91 dated 15.06.2023 for the assessment year TNGST/1990-91 and quash the same as ex-facie illegal, without authority of lw, without jurisdiction and ultra-vires the provisions of the Tamil Nadu General Sales Tax Act, 1959 read with Central Sales Tax Act, 1956 and violative of Article 14, Article 265 of the Constitution of India besides being contrary to the principles of natural justice.

O.S.A.Nos.86 and 99 of 2023

For Appellants : Mr.Haja Nazirudeen, AAG
Assisted by
Mr.M.Venkateswaran, SGP

For Respondents : Mr.S.R.Sundar for R1,
Mr.Ravi Raja Bappu for R2.

All the Writ petitions

For Petitioner(s) : Mr.K.Venkata Subramanian

For Respondents : Mr.Haja Nazirudeen, AAG
Assisted by Mr.M.Venkateswaran
SGP for R1 & R2
Mr.S.R.Sundar for R3

COMMON JUDGMENT

MOHAMMED SHAFFIQ, J.

This is a batch of 16 writ petitions and 2 original side appeals. The issues involved herein are inter-connected and thus, heard together and a common order is being passed.

1.1. All the writ petitions are filed by the assessee challenging the orders of the Joint Commissioner (ST), Salem Division, dated 03.06.2023 in exercise of his powers of revision under section 32 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") and the consequential orders of the Assistant Commissioner (ST) (FAC) Kumarapalayam Assessment Circle, Sankari, Salem, dated 15.06.2023, for the assessment years 1990-91 to 1998-99 under the TNGST Act and CST Act respectively.

1.2. On the other hand, both the original side appeals are filed by the Revenue. O.S.A.No. 86 of 2023 is filed challenging the order of the learned Judge dated 13.04.2023 passed in Company Application No. 221 of 2023 in Company Petition No.243 of 1997 insofar as a direction was issued to obtain clarification from the Division Bench of this Court with regard to the term “authority concerned” mentioned in the order dated 22.04.2022 in W.P.Nos.34578 and 36676 to 36691 of 2015. On the other hand, O.S.A.No.99 of 2023 is filed challenging the order of the learned Judge dated 09.02.2023 passed in Company Application No.416 of 2022 in Company Petition No.243 of 1997 insofar as the official liquidator was permitted to restrict the claim made by the Commercial Tax Officer from Rs.39,17,33,335/- to Rs. 37,79,839/- and to issue revised Form No.69/70 and also defray the expenses in connection with declaration and disbursement of the claim.

2.Before proceeding further, it may be relevant to set out the brief history of the litigation, which reads as under.

2.1. The petitioner was a registered dealer under the TNGST Act and CST Act. He approached this Court earlier by way of writ petitions in W.P. Nos. 34578 and 36676 to 36691 of 2015 challenging the common order dated 09.06.2010 passed by the Tamil Nadu Sales Tax Appellate Tribunal [Additional Bench], Coimbatore, whereby the appeals in C.T.A.Nos.25 to 32 of 2003 and 258 to 266 of 2003 filed by the petitioner herein under section 36 of the TNGST Act in relation to the assessment years from 1990-91 to 1998-99 under the TNGST Act and CST Act respectively, were dismissed. All the said writ petitions were disposed of, by a common order dated 22.04.2022, passed by the Division Bench of this court. From a perusal of the same, it is evident that during the course of the hearing of the above writ petitions i.e., W.P.Nos.34578 and 36676 to 36691 of 2015, the learned counsel for the petitioner submitted that the petitioner would confine himself to a request for an opportunity to produce the relevant documents inasmuch as the Tribunal had dismissed all the above appeals without granting him adequate opportunity to produce the relevant documents. The learned Government Advocate produced a communication dated 22.04.2022 received from the second respondent herein, wherein the Revenue / Department expressed its willingness to extend another opportunity to the petitioner herein to put forth his case and to submit necessary documents. In view of the submissions made by either side, this Court was pleased to remit the matter back directing the petitioner to submit all necessary documents before the “authority concerned” within a period of four weeks from the date of receipt of copy of the said order. The “authority concerned" was directed to consider the submissions and the documents that may be filed by the petitioner and pass appropriate orders on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner within a period of four (4) weeks thereafter. For better appreciation, the relevant portion of the order passed in W.P.Nos.34578 and 36676 to 36691 of 2015 is extracted hereunder:

> *“5.In view of the above submissions made by the learned counsel on either side, without expressing any opinion on the merits of the case, the petitioner is directed to submit all the necessary documents before the authority concerned within a period of four weeks from the date of receipt of a copy of this order. On such submission, the authority concerned shall consider*

the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to him, within a period of four weeks thereafter."

3. Pursuant thereto, the petitioner produced the documents before the second respondent herein, who issued pre-revision notices dated 16.05.2022 and started the process of re-assessment. The petitioner submitted declaration forms in Form F, C and E1. The assessment proceedings were taken up on daily basis and completed *vide* orders dated 31.05.2022 for the assessment years 1990-91 to 1998-99 under the TNGST Act and CST Act respectively. Consequent thereto, the liability of the petitioner stood reduced from Rs.39,17,33,335/- to Rs. 37,79,839/-.

4. Whileso, the second respondent issued revision notices dated 22.12.2022 for the assessment years 1990-91 to 1998-99 under the TNGST Act and CST Act respectively proposing to re-open the assessments by fixing a date for personal hearing. The petitioner responded to the notices *inter alia* highlighting that the assessments have been completed pursuant to and in compliance with the directions of this Court. Thus, the notices dated 22.12.2022 are impermissible and the same are in any view barred by limitation prescribed under the statute as well as the time lines fixed by this Court in the

above batch of writ petitions. The second respondent on considering the said objections, did not proceed any further.

5. In the meanwhile, the Official Liquidator / 3rd respondent in the present writ petitions in W.P.Nos.19222 of 2023 etc. batch, filed a Company Application No.416 of 2022 in Company Petition No. 243 of 1997 seeking permission of this Court to restrict the claim of the Commercial Tax Officer from Rs.39,17,33,335/- to Rs.37,79,839/- in view of re-assessments dated 31.05.2022 for the assessment years 1990-91 to 1998-99 under the TNGST Act and CST Act respectively resulting in reduction of the liability. By order dated 09.02.2023, the learned Judge allowed the said application as prayed for. Aggrieved by the same, the department has preferred OSA No. 99 of 2023.

6. The Revenue has taken out an application viz., C.A. No. 221 of 2023 in C.P.No.243 of 1997, by stating that the orders of assessment dated 31.05.2022 were made on a misconception as to the nature of the direction issued by this Court in the earlier round of litigation. It was also submitted that the direction issued by this Court to the petitioner was to produce the documentary evidence and to put forth his submissions before the "authority

concerned". The expression "authority concerned" mentioned in the order of this Court dated 22.04.2022 was only meant the 'Tribunal' and not the 'Assessing Authority'. Thus, the orders of assessment dated 31.05.2022 are bad for want of jurisdiction. The learned Judge by order dated 13.04.2023 in Company Application No.221 of 2023, issued directions to the learned Special Government Pleader (Sales Tax), to get appropriate clarification from the Division Bench as to the expression "authority concerned" mentioned in the order dated 22.04.2022. The relevant portion of the order dated 13.04.2023 passed by the learned Judge is usefully reproduced below:

> *"Under these circumstance this court is of the view that it would be appropriate to get clarifications by the parties concerned before the Hon'ble Division Bench with regard to the term "Authority concerned mentioned in the aforesaid order, as to whether it would refer to Tribunal or the Assessing Officer or otherwise, on or before 28.04.2023."*

7. Soon thereafter, the first respondent issued pre-revision notices dated 21.04.2023 under Section 32 of the TNGST Act proposing to set aside the re-assessment orders dated 31.05.2022 made under the TNGST Act and CST Act for the assessment years 1990-91 to 1998-99 on the premise that the same are prejudicial to the interest of the revenue, while proposing to re-determine the total and taxable turnover and also penalty, which were deleted *vide* orders dated 31.05.2022. The petitioner responded to the above notices by raising a preliminary objection that in view of the direction of this Court *vide* order dated

22.04.2022 in W.P.Nos.34578 and 36676 to 36691 of 2015, the assumption of jurisdiction under Section 32 is clearly bad. The first respondent issued another notices dated 19.05.2023 granting seven days time to the petitioner to file objections, wherein it was stated as under:

> *"3. In supersession of notice dated 21.04 2023, this revised notice is issued to show cause for having approached the Assistant Commissioner (CT), Kumarapalayam Instead of Sales Tax Appellate Tribunal, Coimbatore wherein you could have produced all records if any available within time stipulated. The Assistant Commissioner had no Jurisdiction to revise order assuming the place of Sales Tax Appellate Tribunal, Coimbatore."*

8. In the meanwhile, the Revenue filed an appeal in O.S.A.No.86 of 2023 against the order of the learned Judge dated 13.04.2023 in Company Application No.221 of 2023 insofar as the direction was issued to the Revenue to obtain clarification from the Division Bench of this Court with regard to the term “authority concerned” mentioned in the order dated 22.04.2022, viz., whether it was the Appellate Tribunal or the Assessing authority. While the above original side appeals are pending, the first respondent had proceeded to pass the orders dated 03.06.2023 under section 32 of the TNGST Act.

9. Thus, the short question that arises for consideration in these writ petitions is, whether the direction issued by this Court on 22.04.2022 in the writ petitions viz., WP. No.34578 and 36676 to 36691 of 2015, to the petitioner

herein to submit the necessary documents before the "authority concerned" was intended to mean the 'Tribunal' or the 'Assessing Authority'. In this connection, it may be relevant to extract the prayer made in the said writ petitions and the operative portion of the order dated 22.04.2022 passed by this court, which read as under:

> *"Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records fo the second respondent in its order dated 09.06.2010 in Appeal Nos.25/03, 26/03, 27/03, 28/03, 29/03, 30/03, 31/03, 32/03, 258/03, 259/03, 260/03, 261/03, 262/03, 263/03, 264/03, 265/03 & 266/03 in respect of Assessment Years 1990-91, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1998-99, 1997-98, 1990-91, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1997-98 & 1998-99 respectively to quash the same and to further direct the second respondent to hold denovo enquiry in respect of the above appeals in the presence of the Official Liquidator, the fourth respondent herein."*
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> *"5. In view of the above submissions made by the learned counsel on either side, without expressing any opinion on the merits of the case, the petitioner is directed to submit all the necessary documents before the authority concerned within a period of four weeks from the date of receipt of a copy of this order. On such submission, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to him, within a period of four weeks thereafter."*

9.1. A reading of the prayer made in the writ petitions and the operative portion of the order as extracted above would show that the expression "authority concerned" mentioned in the order dated 22.04.2022, to which one of us was a party (R.Mahadevan, J.), was only meant the 'Tribunal' and not the 'Assessing Authority'. Resultantly, the orders of the second respondent dated

31.05.2022 were made erroneously assuming jurisdiction and thus, a nullity. As a *sequitur*, the orders dated 03.06.2023 passed by the 1st Respondent, which were made, on the premise that the orders dated 31.05.2022 of the 2nd Respondent are prejudicial to the interest of the Revenue, would no longer survive rather also become *non est*.

10. Since we find that the direction issued by this Court *vide* order dated 22.04.2022 made in W.P.Nos.34578 and 36676 to 36691 of 2015 has been misconceived by both the petitioner and the Revenue, in the peculiar circumstances, we are inclined to permit the assessee / petitioner herein to submit the documents in support of his claim before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. Upon receipt of the same, the Tribunal shall proceed to decide the matter, on merits and in accordance with law, and also taking into account any material / documents that may be submitted by the assessee / petitioner herein, within a period of four weeks thereafter. Accordingly, all the writ petitions stand disposed of.

10.1. In view of the orders so passed in the writ petitions viz., W.P. Nos.19222 of 2023 etc. batch, the prayer made in O.S.A.No.86 of 2023 would no longer survive and is hence, closed.

10.2. With regard to O.S.A.No.99 of 2023, the same stands disposed of leaving it open to the official liquidator / 3rd respondent in the writ petitions, to proceed further as per law, in the light of the orders passed in this batch of writ petitions.

10.3. There is no order as to costs, in respect of all these cases. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
29.01.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Shk/ Spp

To

The Official Liquidator, High Court, Madras,
As the Liquidator of M/s. Tan India Ltd., (In Liquidation)
No.29, Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai 600 001.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

Shk/ Spp

O.S.A. Nos.86 and 99 of 2023
and
W.P.Nos.19222 of 2023 etc batch

29.01.2024