IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Writ Appeal Nos.2620 & 2623 of 2024
and C.M.P.No.18824 and 18831 of 2024

Jay Em Exports
Represented by its Proprietor
New No.54, K.B.Dasan Road,
SIET Administrative Block
Teynampet, Chennai 600 018. ... Appellant in both appeals

Vs.

The State Tax Officer
Alwarpet Assessment Circle
Chennai. .... Respondent in both appeals

Writ Appeals under Clause 15 of the Letters Patent against the order dated 21.07.2023 in W.P.Nos.10567 of 2021.

For Appellant : Mr.A.P.Srinivas

For Respondent : Ms.Amritha Porkodi Dinakaran
Government Advocate

J U D G M E N T

(Delivered by R.SURESH KUMAR, J.)

The appellant is a dealer under TNGST Act of 1959. In respect of assessment years 2004-05 and 2005-06, original assessment orders were passed by the Revenue on 14.09.2005 and 31.10.2006 respectively. Thereafter, notice was issued for revision of assessment and ultimately revised assessment orders were passed for both the assessment years on 30.12.2011. Challenging the said revised assessment orders dated 30.12.2011, the appellant dealer filed writ petitions in the first round of litigation before this Court in W.P.Nos.8643 & 8644 of 2012.

2. The main ground urged by the dealer / appellant herein before the writ Court in the said writ petitions was that those revised assessment orders were passed without giving an opportunity of hearing. On that ground itself, the revised assessment orders were set aside and the writ petitions were ordered by order dated 13.12.2012 by the writ Court, remitting the matter back to the assessing officer for reconsideration and re-assessment, of course after affording an opportunity of being heard to the appellant / dealer.

3. In pursuance of the remand order made by the writ Court, the Revenue issued a letter on 08.01.2013, directing the appellant / dealer to appear for personal hearing on 21.01.2013. The appellant / dealer filed a reply on 18.01.2013 that he had to undergo a major surgery and therefore he wanted 30 days time to attend the personal hearing. Thereafter, there had been no communication from the Revenue according to the appellant / dealer.

4. On 05.03.2013, on behalf of the appellant / dealer, his counsel issued a letter to the Government Pleader about the filing of the writ appeal against the order passed by the Writ Court dated 13.12.2012. It is to be noted herein that, even though the impugned orders were set aside and the matter was remitted back by the writ Court by order dated 13.12.2012, still aggrieved by the order of the writ Court, the appellant filed writ appeals ie., intra Court appeals before this Court with petitions to condone the delay of few days ie., 5 and 9 days respectively.

5. At that stage ie., the writ appeals at the SR stage with notice ordered were kept pending for nearly about nine years before this Court. During this period, it is to be noted that the appellant / dealer has not taken any effective steps to bring the condone delay petitions and get the delay of 5 and 9 days to

be condoned, which will be normally done by this Court invariably in all these cases. However, for the reasons best known to the appellant, they have not taken any steps to bring the CMPs to condone the delay and at that stage, it was pending for nine years as stated supra.

6. Thereafter, on 04.11.2020 the Revenue issued a letter asking the appellant to produce the orders if any passed by the High Court on the appeals filed by them. The appellant had given a reply on 16.11.2020 stating that the appeals were pending and the dealer is 77 years old and due to his advanced age and health conditions, business could not be carried on and the GST registration also was surrendered and cancelled. In fact, he had requested the Revenue to drop the proposals.

7. However, the Revenue issued a letter dated 23.11.2020 asking the petitioner to appear in person on 15.12.2020. The petitioner gave a reply on 24.12.2020 that reopening of assessment under Section 16 is not in accordance with law. On 28.02.2021, the petitioner filed an additional reply stating that TNGST Act was repealed and long years have gone by and the assessment cannot be reopened on a mere change of opinion. Therefore, the proposal cannot be proceeded further. Hence, he requested for dropping the same.

8. On 25.03.2021, the appellant had filed further objections and also required copies since were not given and reopening is attempted to be completed after 16 years from the date of original assessment, that objection has to be accepted and the proposal has to be dropped,

9. However, considering all these objections raised on behalf of the appellant/dealer, the respondent/Revenue passed the revised assessment orders for assessment years 2004-05 and 2005-06 on 26.03.2021 separately. Challenging these revised assessment orders dated 26.03.2021, the appellant/dealer had chosen to file another round of writ petitions in W.P.Nos.10564 and 10567 of 2021.

10. During the pendency of these writ petitions, those writ appeals in W.A.SR.Nos.8567 and 8571 of 2023 which in fact were filed against the order passed by the Writ Court in the first round of litigation dated 13.12.2012 came to be dismissed on the basis of the submission that was made before the Division Bench that what has been required by the appellant has already been furnished by the Revenue and therefore, no further adjudication is required in the main writ appeals. Hence, at the SR stage itself, those writ appeals were dismissed by an order of the Division Bench dated 24.01.2022.

11. Heard Mr.A.P.Srinivas, learned counsel for the appellant who has primarily raised two grounds. The first ground he raised was that, even though under the provisions of the TNGST Act, 1959 there has been no limitation prescribed, within which time the revised assessment should be completed, in case of any inordinate delay in completing such revised assessment, on the ground of such inordinate delay itself, such kind of assessment orders can be interfered with and in this regard Courts have taken the view that even though the Statute does not provide limitation to conclude the revised assessment orders, that would not give freedom to the Revenue to take its own time and after a huge and inordinate delay if the revised assessment order is passed by the Revenue concerned under the TNGST Act, 1959 that kind of order can be interfered with and accordingly some of such orders also have been set aside.

12. Therefore, as per the law made by the law Courts, in this case since there has been a delay of more than 15 years, as the assessment year is 2004-05 and 2005-06 and the assessment orders even though initially was passed in the year 2012, subsequently since it was set aside and the revised orders at last have been passed only in the year 2021, such a delay can very well be construed as inordinate delay without any plausible reason on the part of the Revenue, therefore it is a fit case where this Court can show its indulgence in setting aside

the order, which point even though has been raised before the Writ Court, has not been considered.

13. The second ground raised by the learned counsel for the appellant is that, even on 18.06.2012 itself a request had been made by the appellant to furnish the D-7 findings and D-3 report after inspection has been made by the Revenue. However, those documents have never been furnished to the appellant.

14. This in fact influenced the mind of the Writ Court when the Writ Court passed the impugned order stating that the non-furnishing of the D3 report amounts to violation of Article 14 of the Constitution and therefore on that ground itself the learned Judge of the writ Court since has allowed the writ petition by setting aside the revised assessment orders and remitted the matters back to the Revenue authorities, that itself shows that the non-furnishing of the D3 report for more than a decade shows that there has been an inordinate delay on the part of the Revenue in acceding to the lawful request made by the dealer to get the D3 report. The non-furnishing of such report only made this matter to take up such long time and therefore, each and every stage of the proceedings from 2012 to 2022 for a decade, the delay caused was only by the Revenue and therefore, on that ground also the impugned revised assessment orders which

was impugned before the writ Court ought to have been set aside and the matter ought not to have been remitted for re-assessment, as directed by the learned single Judge through the impugned order, is the second contention of the learned counsel for the appellant.

15. We have heard Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate appearing for the respondent / Revenue. She would reiterate the findings given by the learned single Judge in the impugned order and would state that, pursuant to the said order, already the D3 report as required by the appellant has been furnished to him and the notice for personal hearing also has been given. At that stage since these appeals have been filed, the Revenue is ready and willing to give such personal hearing and to re-assess the matter and pass final orders on merits and in accordance with law, she contended.

16. We have considered the above submissions made by the learned counsel for the parties and have perused the materials placed before us.

17. Insofar as the first ground of delay raised by Mr.A.P.Srinivas is concerned, in fact if we trace the track record of the case, which travelled from 2011 to 2022, the major delay caused was because of the attitude on the part of the appellant. The reason being that, on 30.12.2011 itself the revised order of

assessment was passed by the Revenue and the same were set aside by the writ Court in the first round of litigation by order dated 13.12.2012. When that being so, without having any grievance against the order dated 13.12.2012, the appellant / dealer only preferred intra-court appeals unnecessarily. Assuming that he had any grievance, for which he filed intra court appeals with a delay of 5 and 9 days respectively, for which notice if ordered by this Court, within a requisite time that miscellaneous petition could have been brought for hearing at the instance of the appellant / dealer. However, for several years no steps have been taken by the appellant / dealer to bring the condone delay petitions for hearing.

18. At one point of time ie., on 04.11.2020, the Revenue issued a letter stating that if any orders have been passed by the High Court in the pending writ appeal, that can be produced. However, even though the dealer was triggered by receipt of such notice by the Revenue, he has not chosen to bring the CMPs and he has simply given a reply to the Revenue that he is 77 years old and the GST registration had been surrendered and therefore the proposal had to be dropped.

19. Even thereafter, when the second revised assessment orders were passed on 26.03.2021, the appellant / dealer has chosen to file two writ petitions

and when those writ petitions were pending, the earlier two writ appeals in SR stage came up for hearing before a Division Bench on 24.01.2022, where the appellant/dealer had stated before the Division Bench that the Revenue authorities have passed appropriate orders with regard to the claim of the petitioner and hence nothing survives for adjudication. Recording the same, the Division Bench dismissed those writ appeals at the SR stage itself by order dated 24.01.2022.

20. Therefore, it cannot be stated that because of the delay caused by the Revenue, the revised assessment orders have been made after inordinate delay and therefore that requires interference by this Court. It is purely because of the attitude of the appellant/dealer such a huge delay has occurred in this case. Therefore, the first ground raised by the appellant is to be rejected and accordingly it is rejected.

21. Insofar as the second ground that on 18.06.2012 a request was made by the appellant / dealer to get D3 report is concerned, there has been no proof before this Court that such a request had been made on 18.06.2012. Further, we are able to find that before the writ Court, the said issue was raised by the learned counsel appearing for the appellant. Even though it was stated by Mr.A.P.Srinivas that in the letter dated 18.06.2012 issued by the Revenue, the

letter of the appellant / dealer dated 05.06.2012 is mentioned and the last sentence of the letter of the Department dates 18.06.2012 states " *In the circumstances, the attested copies of the assessment files could not be furnished."* From the above, it cannot be construed that the appellant/dealer had made a specific request to the Revenue to provide the D3 report. If such a copy of the assessment files is required, that was supplied by the Revenue by letter dated 18.06.2012.

22. Therefore, without asking any such D3 report to the knowledge of the Revenue, when such ground was raised for the first time before the writ Court at the time of hearing the two writ petitions and that was also taken note of by the learned Judge and he in fact found that non-furnishing of such D3 report is violation of principles of natural justice. Therefore, on that ground the learned Judge, having set aside the revised assessment orders, remitted the matter back to the assessing officer for re-consideration. Even that ground since has been answered by the writ Court itself, he cannot make out a case out of the second ground also.

23. That apart, when a letter had been sent on 25.03.2021 by the appellant/ dealer stating that the reopening is time barred as it was made without furnishing attested copies of the assessment files and investigation final

report along with department copies and other office correspondences even after waiting for years and therefore the proposal cannot be justifiable. If that was the request made by the appellant/dealer on 25.03.2021, no blame can be put against the Revenue as if that without furnishing the D3 report or any further report which was sought for by the appellant the Revenue has delayed the matter.

24. Therefore, both the grounds urged by the learned counsel for the appellant since have to be rejected, both are rejected. Now it is for the appellant/dealer, since he has already been furnished with the D3 report pursuant to the order passed by the writ Court, to appear before the assessing officer, for which a fresh notice can be given by the assessing officer fixing a date. On that date, without fail if the appellant appears and put forth his defence, that can be considered by the Revenue and ultimately a final decision can be taken with regard to the proposal of passing of the revised assessment orders.

25. In the aforesaid facts and circumstances and the discussion made herein above, we are inclined to dispose of these writ appeals with the following order.

(a) The order passed by the writ Court dated 21.07.2023 in W.P.Nos.10567 and 10564 of 2021 is to be sustained and accordingly the impugned orders are sustained.

(b) Consequently, as directed by the learned single Judge, it is open to the appellant / dealer to appear before the respondent Revenue for a personal hearing.

(c) In this regard, the assessing officer shall issue a communication to the appellant / dealer informing the date of personal hearing, prior to two weeks of the date of hearing.

(d) On receipt of such communication, without fail or taking any lame excuses, the appellant / dealer shall appear before the assessing authority.

(e) After giving such an opportunity of being heard, it is for the assessing authority to complete the revised assessment and pass orders on merits and in accordance with law thereafter within a period of two months.

With the above directions, the writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (C.S.N.,J.)
04.09.2024

NCS : Yes/No
Index : Yes/No
KST

R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

KST

To

The State Tax Officer
Alwarpet Assessment Circle,
Chennai.

W.A.Nos.2620 & 2623 of 2024

04.09.2024