(2015) 03 MAD CK 0399

In the Madras High Court

Case No : Writ Petition (MD). Nos. 4156 to 4159 and 4189 to 4194 of 2015 and M.P. (MD). Nos. 1 and 2 of 2015 (in all Wps)

Cheran Cements Limited APPELLANT

Vs

The Joint Commissioner (CT) and Others RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0399

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Rajasekar, for the Appellant; R. Karthikeyan, Additional Government Pleader, Advocates for the Respondent

Judgement

B. Rajendran, J.

1. Since the issue involved in all these Writ Petitions are one and the same, they are taken up together and decided by a common order.

2. All these Writ Petitions have been filed challenging the rejection of the Settlement Order.

3. The facts of the case is that the Petitioner Company has applied under Section 5 of the Samadhan Act,2011, whereby, they have deposited the money. According to them, the amount was paid as per the Best Judgment Assessment Due. However, the respondents had wrongly interpreted the Act and applied Sections 7(a) and 7(c) together for arriving at the amount. In other words, a Best Judgment assessment as contemplated under Section 7(a) is distinctively different from assessment made under Section 7(c). Therefore, the rejection of the settlement application by the respondents is absolutely not correct. Further, the Petitioner Company is not liable to pay the amount as sought for by the respondents. Due to wrong interpretation, the very right of the petitioner got defeated. The sum and substance of the contention of the learned counsel for the petitioner is that the respondents did not properly interpret and apply the

Sections 7(a) and 7(c) of the Act. If the property in question is auctioned, they will be put to irreparable loss, as they are already several financial constraints.

4. Mr. R. Karthikeyan, learned Additional Government Pleader, through the impugned order would contend that the Petitioner Company knowing fully well that on the date when he applies for the Settlement, necessarily, he has to comply with the mandatory provisions, namely, Section 6 and 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. (for short ''the Act''). Conveniently, the petitioner company had paid the lesser amount and claiming the Settlement Certificate as if the Petitioner Company has paid the amount as per the Best Assessment Order, which is far below than the actual amount to be remitted as prescribed in the Act.

5. To lay on emphasis this fact, he brings to the notice of this Court, in one of the assessment years of the Petitioner Company, under this Scheme, in respect of the application made under Sub-section (1) of Section 5 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 for the year 2003- 2004, wherein, the petitioner company instead of paying 100% admitted tax, along with 40% enhanced tax, with 7.5% interest, they have paid only 40% of the amount alone, which is phenomenally very low. Similarly, in the same order, in the interest portion, the Petitioner Company has to pay the amount along with interest was Rs. 82,05,177/-. But, the petitioner Company had paid Rs. 25,78,636/-. Therefore, the balance amount is to be paid by the petitioner Company is Rs. 56,25,6541/-. The difference in depositing the amount is 69%.

6. He would further contend that, at the time of filing of the Settlement Application itself, he had more than 69% of the amount due, which is a requisite deposit, as contemplated under the sub-section 3 Section 6 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. As per the rules, not only the tax but also the interest has to be paid. But, conveniently, all along, he has been paying the lesser amount. In fact, the Petitioner Company has earlier filed a Writ Petition in W.P.(MD). Nos. 5638 of 2014 etc.,. The said Writ Petition was disposed of by this Court on 03.09.2014, wherein, this Court remanded the matter for consideration and for personal hearing to the Petitioner Company and thereafter, directed the authorities concerned to pass orders afresh. The learned Additional Government Pleader would point out that the orders impugned in these Writ Petitions are passed after giving opportunity of hearing to the petitioner company. In any view of the matter, when the petitioner company fails to comply with the norms laid down in the Settlement Scheme, he becomes ineligible in availing the Scheme itself. Therefore, rightly, the respondents have rejected the claim of the Petitioner Company.

7. Heard both sides. By consent, all the Writ Petitions are taken up.

8. In the case on hand, the petitioner company''s properties is sought to be auctioned by tomorrow. Further, it is stated by the learned counsel appearing for the petitioner that the petitioner company is already in a financial crunch.

According to the Petitioner Company, the interpretation given by the respondents in respect of the Sections 7 of the Act is wrong. For better understanding of the case, Clause 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, is usefully extracted below:--

"7. Rate applicable in determining amount payable:- The amount payable by the applicant and to be waived shall be determined as follows:--

(a) Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the applicant shall pay forty per cent of arrears of tax pending collection on the date of application along with interest calculated at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(b) Where it relates to arrears of tax, including any arrears of tax accrued due to non-filing of declaration forms which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay forty per cent of such arrears of tax pending collection on the date of application along with interest at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

c) Where it relates to arrears of tax, which was admitted as tax due as per return filed for the year with corresponding arrears of penalty and interest, the applicant shall pay the entire arrears of tax pending collection along with interest at seven and a half per cent per annum and on such payment, the balance of interest and the entire penalty shall be waived.

d) Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten per cent of the penalty and twenty-five per cent of interest, the balance of penalty and interest shall be waived."

9. Reading of above-said Clause makes it very clear that before even filing of Settlement, an applicant has to necessarily comply with the mandatory conditions laid down in the Scheme. There is no dispute in this regard. Now, the petitioner wants to take advantage of Section 7(a) alone whereas, the authorities, in the case on hand, have invoked 7(a) and 7(c) of the Act together. Therefore, he has come forward with these Writ Petitions for the relief stated earlier.

10. As rightly pointed by the Additional Government Pleader, Section 7 does not say ''either'' ''or'' and it contemplates, one by one, as extracted above, which is inclusive of all. As per Section 6, at the time of giving application for Settlement, the minimum amount as prescribed in the said Section has to be complied with. If the contention of the petitioner is accepted after paying the minimum amount and filing of the Settlement Application, on the last day, they will enjoy the time

that cannot be permitted. In the earlier round of litigation in W.P.(MD). No. 5638 of 2014 etc., since there was no personal hearing the matter was remitted back for passing orders afresh. Thereafter, personal hearing was given and the present impugned order came to be passed. Even then on the date of entering into settlement application, the Petitioner Company has not paid the amount as prescribed in the Act.

11. Further, it is stated by the learned Additional Government Pleader that on the date of entering into the settlement enquiry, there was proceedings pending before the Assistant Commissioner, Karur. Such argument cannot be accepted for the reason that there is a provision to the effect that which shall be deemed to have been withdrawn from the date of making of application under Sub-section (1) of Section 5.

12. In view of the foregoing discussions and observations, I do not find any infirmity or illegality in the orders impugned in these Writ Petitions. Hence, all these Writ Petitions are liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

