

(2014) 10 MAD CK 0277

In the Madras High Court

Case No : Writ Petition Nos. 25875 and 25876 of 2014

Gopalakrishna Poly Industries

APPELLANT

Vs

The Joint Commissioner CT Salem Division

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 — Section 2(1)(a), 2(1)(b), 2(1)(e), 3, 4

Citation : (2014) 10 MAD CK 0277

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T. S. Sivagnanam, J.—In both these writ petitions, the petitioner has challenged the order passed by the first respondent dated 21.1.2013 rejecting the petitioner's applications filed under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 (hereinafter referred to as "the Samadhan Act/Settlement Act").

2. The petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, the Tamil Nadu General Sales Tax Act as well as the Central Sales Tax Act. They are engaged in the business of printing and supplying HDPE bags to their customers in accordance with the designs and specifications given by the customers. The orders of assessment were passed by the second respondent for the assessment years 2000-01 and 2001-02 dated 31.10.2002 and 28.10.2003 respectively. The petitioner filed applications under the Samadhan Act for both the assessment years by applications dated 28.8.2010 requesting for settlement of their case at the earliest. Both the applications were processed by the first respondent and an order was passed by the second respondent dated 22.2.2011 calling upon the petitioner to pay the differential amount. In fact, this order was passed in terms of Section 6(2) of the Act. On receipt of the said order, the petitioner submitted two representations dated 8.3.2011 stating that they have complied with the conditions mentioned in the Samadhan Scheme and calculated the amount

correctly as per the Scheme and reported the taxable turnover correctly, therefore, requested for the copy of the workings so as to enable them to submit their reply. This was followed by another representation dated 7.10.2011. Since the copies of the documents sought for were not forthcoming, the petitioner moved this Court by filing a writ petition in W.P.No. 27540 of 2011 praying for issuance of a writ of mandamus to provide the details as requested by the petitioner in their representations dated 8.3.2011 and 7.10.2011. The writ petition was disposed of favourably and a direction was issued to provide the details. Thereupon the petitioner submitted further representations. Ultimately, the first respondent, by order dated 10.4.2012, called upon the petitioner to pay certain amounts under Section 7 of the Samadhan Act. The petitioner was also directed to pay interest at 6%. The petitioner raised an objection on 20.4.2012 stating that if the amount as demanded is paid, the object of the Scheme for providing settlement of arrears of tax and penalty itself would stand defeated, therefore, requested to settle their case. This was followed by another representation dated 22.4.2012. The petitioner, by letters dated 28.4.2012, paid a sum of Rs.12,381/- and another sum of Rs.54,014/-. It is thereafter the impugned proceedings have been issued stating that the petitioner is not entitled to the benefit of the Samadhan Scheme. These orders are impugned in these writ petitions.

3. Heard the learned counsel for the parties and perused the materials available on record. This Court in the case of Cheran Cements Limited v. Joint Commissioner (CT), Trichy Division and another in W.P.(MD)Nos. 5638 of 2014 etc., batch dated 3.9.2012 considered the scope of the Samadhan Act and as to how the Scheme of the Act operates and at this stage, it will be useful to refer to the relevant portions of the order in the writ petitions, as follows:-

""18.....The Act provides for settlement of arrears of tax, penalty or interest pertaining to sales tax and the matter connected therewith or incidental thereto. The Act came into force on 26.09.2011. Section 2(1)(a) defines "applicant" to mean the dealer as defined in the relevant Act. The "relevant Act" has been defined under Section 2(1)(e) to mean the repealed Tamil Nadu General Sales Tax Act, repealed Tamil Nadu Sales Tax (Surcharge) Act and the repealed Tamil Nadu Additional Sales Tax Act as well as the Central Sales Tax Act and the Rules made or notifications issued under this enactment.

19. The arrears of tax, penalty or interest has been defined in Section 2(1)(b) and it includes additional sales tax, surcharge, additional surcharge and central sales tax or penalty or interest pertaining to the assessment years upto 2006-2007 for which assessment has been made prior to 01.08.2011 under the relevant Act and pending collection on the date of filing of application under the Settlement Act.

20. It is not in dispute that the first respondent is the designated authority under the provisions of the Act and appointed by the Government under Section 3. The persons, who are eligible for settlement under the Act has to fulfill the conditions

under Section 4 and in this case it is not in dispute that the petitioner was entitled to avail the provisions of the Settlement Act. The procedure for filing an application has been spelt out in Section 5 of the Act. Section 6 deals with determination of amount payable by the applicant and Section 7 deals with rate applicable in determining amount payable and they are as follows:

""5. Application for settlement.- (1) An application for the purpose of section 4 shall be made to the designated authority by an applicant within six months from the date of commencement of this Act or by such later date as the Government may, by notification, specify, from time to time, in such form, and in such manner, as may be prescribed, with proof of payment of the amount payable at the rates specified in section 7.

(2) A separate application shall be made for each assessment year.

(3) The applicant shall send a copy of the application made under sub-section (1) to the assessing authority, appellate authority or revisional authority under the relevant Act, before whom any proceeding or appeal or revision, as the case may be, is pending, within seven days from the date of making such application before the designated authority.

6. Determination of amount payable by the applicant. - (1) The designated authority shall verify the correctness of the particulars furnished in the application made under section 5 with reference to all relevant records and determine the amount payable at the rates specified in section 7(2) The designated authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with application falls short of not more than ten per cent of the amount determined under sub-section (1). (3) If the applicant has not paid ninety per cent of the amount payable under section 7 along with the application, the designated authority shall summarily reject the application. (4) The amount determined under sub-section (1) shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, and, if such part is fifty paise or more, it shall be rounded off to the nearest rupee, and if such part is less than fifty paise, it shall be ignored.

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 application 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 returns 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?

21. In terms of the above provisions, the applications shall be presented within six months from the date of commencement of the Act in the form prescribed with proof of payment of the amount payable at the rates specified in Section 7. Section 7 contains four clauses. Clause (a) deals with the cases relating to best of judgment assessment for non-production of accounts; Clause (b) deals with non-filing of declaration forms, which arise under the provisions of CST Act; Clause (c) relates to arrears of tax, which has been admitted as tax due as per the returns filed for the year with corresponding arrears of penalty and interest and Clause (d) 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 amount which the applicant has to pay under each of the clauses have been mentioned.

22. Therefore, the applicant, while submitting application under Section 5 has to calculate the amount payable as per the rates mentioned in Section 7(a) to (d) and remit the same and file proof of payment along with application. A separate application is required to be filed for each assessment. If any application or revision is pending, then the applicant has to forward the copy of the application to the said authority in terms of Section 5(3). Therefore, at the first instance, the onus lies on the dealer/applicant to determine the payment payable under Section 7. We have noticed that under Section 7, it is a rate applicable for determining the amount payable, which at the first instance is on the dealer/applicant. In terms of Section 6(1), the designated authority is bound to verify the correctness of the particulars furnished in the application made under Section 5 with reference to all relevant records and determine the amount payable at the rate specified in Section 7.

23. Therefore, at that stage the designated authority has to verify as to whether the rates as calculated by the petitioner while submitting application under Section 7 was correct. In the event the designated authority finds any

discrepancy, in terms of Section 6(2), shall demand further amount payable in the form prescribed. However, there is an important rider in sub-section 2 to Section 6, which states that if the amount paid by the applicant along with application (in terms of Section 7) falls short of not more than 10% of the amount determined under sub-section (1), then and then alone the question of demanding further amount under Section 6(2) would arise. If the applicant failed to fulfill the conditions under sub-section (2) of Section 6, his application stands summarily rejected in terms of sub-section (3) of Section 6. Thus, the Act being a Settlement Act to give reprieve to the dealer/applicant and bring him out of the misery has first thrown the onus on the dealer/applicant and he has a statutory duty to compute the rate applicable in accordance with Section 7 of the Act, by considering all the relevant records. If the dealer/applicant properly computes the amount and remits the same and encloses proof of such payment along with the application under Section 5, the same will be taken for verification and if the designated authority, on going through the relevant records, finds that further amount is payable and if the same fall short of not more than 10% grant relief to the dealer and if not the application stands summarily rejected. Therefore, the Act operates on strict limits as clearly defined under the Statute. The onus is not only on the dealer to carefully peruse all his records and relevant documents while determining the rate payable by him, but also on the assessing officer while verifying the application as to the correctness of the particulars furnished exercising power, under Section 6(1) by taking into consideration relevant records and then determine the amount payable at the rates specified in Section 7. It is a settled legal principle that any Settlement Act or amnesty scheme have to be strictly interpreted and there cannot be any substitution or reading down the provision and the dealer/applicant cannot seek for reliefs beyond the scope of the scheme of the Settlement Act.

24. Apart from the above referred provisions, Section 8 of the Act deals with settlement of arrears and issuance of certificate. If the authority is satisfied about the payment of amount determined under Section 6(1), by an order, settle the arrears of tax, penalty or interest and issue a certificate in such form as may be prescribed, and thereupon the applicant shall be discharged from his liability or interest. In terms of sub-section (2) to Section 8, the designated authority, for reasons, to be recorded in writing, may refuse to settle the arrears of tax, penalty or interest and such orders shall be passed after giving reasonable opportunity to the applicant to show-cause against such refusal. In terms of sub-section (3) to Section 8, the authority notified by the Government may, at any time, within ninety days from the date of issuance of certificate under sub-section (1) of Section 8 by the designated authority, modify the certificate by rectifying any error apparent on the face of the record. Therefore, the applicant to be entitled to certificate under Section 8(1) has to first satisfy the designated authority about the payment of the amount determined under sub-section (1) to Section 6. Even if the applicant satisfies such requirements, still the designated authority has power to refuse to settle the arrears of tax, penalty or interest by

recording reasons in writing after issuing show-cause notice.'"

4. From a reading of the above order, it is seen that the Scheme of the Samadhan Act has provided necessary checks and balances and it is not as if as and when applications are filed under Section 7, they are automatically accepted. The first stage by which the designated authority has an opportunity to throw out an application is while examining the same under Section 6 of the Act. In the instant case, the petitioner's applications were examined and the authority was satisfied that the petitioner is entitled to the benefit of the Scheme and therefore orders were passed on 22.2.2011 demanding payment from the petitioner under Section 6(2) of the Act. The petitioner was granted seven days time. The petitioner disputed the computation by submitting representations. The first respondent neither resiled from his decision nor took any decision to state that the petitioner was not entitled to the benefit of the Samadhan Act by subsequent proceedings related to the computation of the amount demanded in the demand dated 22.2.2011 and the same was put to rest after the petitioner effected payments on 28.4.2012. Therefore, by a mere change of officer, now the clock cannot be set back and the petitioner's applications cannot be rejected, when the same were already entertained, the amounts demanded and the only dispute which was with regard to the quantum. Therefore, the impugned proceedings are vitiated on the ground that the procedure contemplated under the Act does not provide for passing such an order at such stage. Accordingly, the writ petitions are allowed and the impugned proceedings are quashed. Consequently, there will be a direction to the first respondent to issue the necessary certificate under Section 8 settling the case of the petitioner on the terms stated above. Consequently, M.P.Nos. 1 of 2014 are closed. No Costs.