IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.38116 of 2015
and
M.P.No.1 of 2015

M/s. Appollo Distilleries (P) Ltd.
Rep. by its Vice President
Mr. Susheel Kumar
EMPEE Tower No.59 Harris Road
Pudupet, Chennai-2. ...Petitioner

Vs

1 The Joint Commissioner
Commercial Taxes (CENTRAL)
Greams Road, Chennai-6.

2 The Assistant Commissioner
Commercial Taxes (FAC)
Egmore Assessment Circle Chennai-6.

3 The Tamil Nadu State Marketing
Corporation Ltd.
Rep. by its Managing Director (TASMAC)
4th Floor CMDA Tower II
Gandhi Irwin Bridge Road
Egmore Chennai-8.
...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the 2nd Respondent relating to the Notice in Form U dated 25.11.2015 in TIN/ 33410442671/2015-16/A3 and quash the same and direct the Respondents 1 to 2 to grant 16 weekly instalments to pay the present VAT arrears of Rs.7,09,33,353/- by the petitioner

For Petitioner :Mr.J.Ravindran

For R1 & R2 :Mr.S.Manoharan Sundaram, AGP
For R3 :Mr. S.Muthuraj

ORDER

Heard the learned counsel for the petitioner, Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for respondents 1 and 2 and Mr.Muthuraj, learned counsel, who took notice for respondent 3 and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition is filed challenging the notice issued in Form U dated 25.11.2015 and to direct the respondents 1 to 2 to grant 16 weekly instalments to pay the present VAT arrears of Rs.7,09,33,353/- by the petitioner.

3. Petitioner is a company duly incorporated under the Indian Companies Act, 1956 inter alia carrying on business in the manufacture and sale of Indian made Forein Liquor. It has been duly registered under the Value Added Tax Act under TIN No.33410442671.

4. The turnover of the petitioner company is about Rs.18.75 crores per month. Due to the financial crunch and other circumstances, the petitioner company was not able to pay the tax on the date of filing of Return. In these circumstances, the 2nd respondent had issued notice for recovery of money due in form 'U' dated 25.11.2015 under Rule 9(4) of the Tamil Nadu Value Added Tax Act 2006 to the 3rd respondent calling upon him to pay the total sum of Rs.7,09,33,353/- to the 2nd respondent towards VAT dues and interest. Likewise, the 2nd respondent also issued notice to the petitioner's banks. Along with the above said notice, the 2nd respondent also issued notice dated 25.11.2015 to the petitioner under Section 39(14) of TNVAT Act, 2006 proposing to cancel the petitioner's registration under TNVAT Act, 2006 and CST Act, 1956. In this regard, the company made a representation to the respondents on 25.11.2015 requesting them to accord permission to pay the arrears of the tax due in weekly installments. Since the request of the petitioner was not considered, the petitioner company is before this Court with this writ petition challenging the said impugned notice.

5. The learned counsel for the petitioner has drawn the attention of this Court to the order dated 08.01.2015 in W.P.No.394 of 2015 and submitted that the petitioner therein was directed to settle the entire arrears along with interest in 12 weekly installments and undertakes to pay the entire arrears along with interest in 24 equated weekly installments.

6. At this juncture, the learned Additional Government Pleader pointed out that the interest accrued also need to be paid by the petitioner along with the entire arrears amount. The relevant portion of the order dated 08.01.2015 referred above, is extracted hereunder:

> "3. Learned Additional Government Pleader appearing for the respondents insisted that the interest accrued also need to be paid by the petitioner and it should not be contended later that the arrears amount determined alone has got to be paid.
>
> 4. The learned Additional Government is perfectly correct. The petitioner will have to pay the amount determined together with interest till the entire amount is paid to the respondent. Since the petitioner has agreed to pay the amount in 12 weekly instalments, recording the submission of the learned counsel for the petitioner, the respondents are directed to receive the amount due from the petitioner together with interest in 12 weekly instalments, which shall commence from 21.1.2015 and the subsequent instalments shall become due on every Wednesday thereafter. The writ petition is disposed of accordingly. The connected miscellaneous petition is closed."

7. The arrears assessed by the Assessing Officer has not been disputed. The petitioner undertakes to pay the entire arrears along with interest in 12 equated weekly installments. Section 42 of the TNVAT Act provides that admitted taxes to be paid as directed by the Assessing Authority either in full or as permitted in installments. Hence, there is no need to quash the impugned order and the same shall be kept in abeyance. At the same time, since the demand is to the tune of Rs.7 crores and in view of the submission made by the learned Additional Government Pleader and in view of the fact that the petitioner

only seeks indulgence of this Court to permit them to pay the arrears in 12 equated installments, the following order is passed:

"There shall be a direction to the petitioner to pay the entire arrears along with interest in 12 equated weekly installments on every Tuesday which shall commence from 8th of December 2015. If there is failure on the part of the petitioner in paying any one of the installments, the respondents are at liberty to proceed in the manner known to law".

8. The Writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1 The Joint Commissioner
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Egmore Chennai-8.

+1cc to Mr.J.Ravindran, Advocate sr.65073
+1cc to Special Government Pleader Sr.65360

W.P.No.38116 of 2015

cgj[co]
srg 2/12/2015