



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal (MD) No.774 of 2011

M/s.Gojay Agro Food Industries P.Ltd.,
Rep.by its Director G.Mahendran,
Door No.99, Ward No.3, Maniparaipatti,
Sattur Taluk,
Virudhunagar District.

...Appellant/Writ Petitioner

-vs-

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Industries Department,
Fort.St.George,
Chennai.

2.The Deputy Commercial Tax Officer,
Sattur,
Virudhunagar District.

3.The Assistant Commissioner (CT)
Virudhunagar.

...Respondents/Respondents

Prayer : Petition filed under Clause 15 of Letters Patent praying to set aside the order in W.P(MD)No.11576 of 2005 dated 29.10.2010.

Prayer in WP(MD). 11576/ 2005 :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ Certiorari, calling for the records of the respondent relating to the impugned order of the 2nd respondent in ref.No. A3/2986/99 dt. 16/09/2005 as published in the virudhunagar district Gazettee dated 26/10/05 and quash the same.

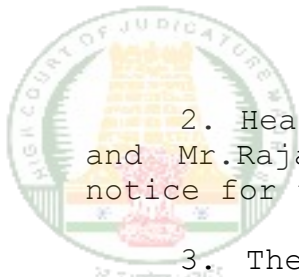
For Appellant : Mr.S.Natarajan

For Respondents : Mr.Raja Karthikeyan
Additional Govt.Pleader.

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

Challenging the publication made in the Virudhunagar District Government Gazette proposing to bring the properties of the appellant to sale in terms of the Tamil Nadu Revenue Recovery Act, for realization of arrears of penalty and tax due under the local Sales Tax laws of the State, the appellant filed a writ petition in W.P(MD)No.11576 of 2005. The writ petition was dismissed by the learned Judge, by an order dated 29.09.2010. Aggrieved by the said order the appellant is before us.



2. Heard Mr.S.Natarajan, learned Counsel appearing for the appellant and Mr.Raja Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. The appellant was a Company, which was granted the benefit of Interest Free from the Sales Tax deferral scheme by the Government of Tamil Nadu on account of the fact that they have set up an Industry in a backward area. The scheme required the appellant to enter into an agreement with the Government of Tamil Nadu. As per the terms of an agreement, the appellant was entitled to collect the sales tax from the customers, to retain the same for the benefit of the Industry for the period of about five years. The period of benefit fixed under the scheme was from 1995-96 to 2000-01. The repayment was to commence from the financial year 2001-02.

4. It appears that even after the expiry of the period of benefit, the appellant did not pay the tax collected from the customers. The total amount defaulted was sought to be collected by the respondents, by initiating the proceedings under the Revenue Recovery Act. The publication was made in the District Government Gazette on 16.09.2005.

5. The appellant challenged the initiation of proceedings under the Revenue Recovery Act, on the short ground that the tax due under the Interest Free from Sales Tax deferral scheme automatically gets converted into a loan repayable to the Government after the expiry of the period of benefit. Once, the amount payable under the Local Sales Tax Law get converted into a loan, the appellant is not entitled to invoke the provisions of the Tamil Nadu Revenue Recovery Act, 1864, by taking recourse to Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959.

6. But the aforesaid contention raised by the appellant, in our considered opinion was rightly rejected by the learned Judge. Section 24 (2) of the Tamil Nadu General Sales Tax Act, 1959 states that any tax assessed on or has become payable by, or any other amount due under this Act, from a dealer or person and any fee due from him under this Act, shall subject to the claim of the Government in respect of land revenue, have priority over all other claims against the property of the said dealer. Sub-Section (2) of Section 24 also states that without prejudice to any other mode of collection, such arrears may be recovered as land revenue. It is by virtue of those provisions that the arrears may be recovered as land revenue, that the respondents became entitled to invoke the provisions of the Tamil Nadu General Sales Tax, Act 1959.

7. The contention that under the terms of the agreement, the arrears of sales tax payable by the appellants got converted into a loan repayable to the Government and that therefore it had lost the character of the sales tax arrears, cannot be accepted. A careful look into Section 24 (2) would show that there are three types of amounts that are mentioned in Section 24(2) of the said Act. They are "(1) Any tax assessed on or has become payable (2) any other amount due under this Act, and (3) any fee due from him under this Act."

8. Therefore, even if we agree that the arrears of tax payable by the appellant, by a figment of imagination get converted into a loan, the same would come within the category of "any amount due" mentioned in



Section 24(2). Therefore, the only contention on the basis of which the appellant challenged the initiation of revenue recovery proceedings was rightly rejected by the learned Judge.

9. Mr.S.Natarajan, learned Counsel appearing for the appellant, contended next that during the pendency of these proceedings the State of Tamil Nadu came up with an Act known as The Tamil Nadu Sales Tax (Settlement and Arrears) Act, 2011. According to the learned Counsel, the appellant filed an application under the said Act, on 19.03.2012. Therefore, the learned counsel contended that at least the case of the appellant should have been considered for the benefit of "Samadhan Scheme."

10. But, unfortunately, the 2011 "Samadhan Scheme" Act requires an assessee seeking settlement of arrears, to make an application in the prescribed format along with the amount specified in Clauses (a) to (d) of Section 7 of the 2011 Act. While Clauses (a) and (b) covered Tax, interest and penalty, either as admittedly due or due under the best of judgment assessment Clauses (c) and (d) covered interest and penalty. The case of the appellant would be covered by Section 7(d).

11. But, even to have the benefit the said provisions, the appellant should have satisfied two conditions namely (1) filing an application in the prescribed format and (2) paying 10% of the penalty.

12. According to the appellant, they made an application on 19.03.2012, though not in the prescribed form. Insofar as the second requirement is concerned, it is the case of the appellant that a sum of Rs.73,552/- was due as refund from the Department. The total penalty demanded was Rs.4,45,874/-. Hence, it is contended by Mr.S.Natarajan, learned Counsel appearing for the appellant that 10% of the penalty which works out Rs.44,587/- was much less than Rs.73,552/- due as refund from the Department. Hence, his contention is that the Department could have adjusted the pre condition amount prescribed under Section 7(d) from the amount of refund due to him and allowed the benefit of "Samadhan Scheme."

13. But, unfortunately, this is not the manner in which the Samadhan Scheme works. The appellant, in their representation dated 19.03.2012, did not even make such an offer. In fact in the penultimate part of the representation dated 19.03.2012 they informed the respondents that they would pay the amount demanded by the respondents, for the purpose of settling. Therefore, it is not open to the appellant to contend in the Court that the pre-deposit condition of 10% for the settlement of dues could have been adjusted from and out of the amount of refund amount. Therefore, we find no merit in the writ appeal and accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant RegistrarCO)

/True Copy/

Sub Assistant Registrar



1.The Secretary to Government,
Industries Department,
Fort.St.George,
Chennai.

2.The Deputy Commercial Tax Officer,
Sattur,
Virudhunagar District.

3.The Assistant Commissioner (CT)
Virudhunagar.

+1cc to Mr.S.Natarajan, Advocate SR.No.70933

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