IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-02-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

W.P.Nos.6241, 6242, 6243, 6244 and 6245 of 2004

M/s Rogini Mills,
No.2, Rogini Garden,
Kangayam Road,
Tirupur - 641 604 .... Petitioner in all the writ petitions

vs

1. The Assistant Commissioner (CT),
   Tirupur

2. The Commercial Tax Officer,
   Central - I, Tirupur

3. The Branch Manager,
   ICICI Bank Limited,
   Sabarai Salai,
   Kumaran Road,
   Tirupur

..... Respondents in all the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorari to call for the records on the file of the second respondent in TNGST .ASST.Nos.2401697/1997-98; 2401697/1998-99; 2401697/2001-02; 2401697/1999-2000 and 2401697/2000-2001 and quash the recovery proceedings dated 31.10.2003.

For petitioner	:	Mr.R.L. Ramani, Senior Counsel for 0Mr.Chandran Karuppiah
For R.1 & R.2	:	Mr.S. Kanmani Annamalai Additional Government Pleader (T)
For R.3	:	No appearance

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorari Certiorari to call for the records on the file of the second respondent in TNGST.ASST.Nos.2401697/1997-98 (in respect of W.P.No.6241/2004); 2401697/1998-99 (W.P.No.6242/2004) ; 2401697/2001-02 (W.P.No.6243/2004) ; 2401697/1999-2000 (W.P.No.6244/2004) and 2401697/2000-2001 (W.P.No.6245/2004) dated 31.10.2003 and quash the same.

2. Mr.R.L. Ramani, learned Senior Counsel, appearing for the petitioner submitted that the Original Unit was entitled for deferral benefit upto 30.04.2005 and the expansion unit upto 30.04.2006 and the question of payment of taxes upto the base volume of sales for the expansion unit would arise only during the Assessment Year 2005-2006, when there is no deferral facility for the existing unit. That apart, the learned Senior Counsel also submitted that without affording an opportunity to the petitioner to put forth their case, the second respondent erroneously resorted recovery proceedings, without issuing a show cause notice.

3. On a reading of the impugned recovery proceedings dated 31.10.2003, it is clear that even without affording an opportunity to the petitioner, the second respondent had requested the petitioner to pay the tax due within three days from the date of receipt of copy of the notice along with penal interest under Section 24(3) of the Tamil Nadu General Sales Tax Act 1959.

4. The learned Senior Counsel further submitted that the petitioner had already paid the entire tax liability by availing the deferment of sales tax, which was sanctioned by the Assistant Commissioner (CT), Tiruppur.

5. Mr.S. Kanmani Annamalai, learned Additional Government Pleader (Taxes), appearing for the respondents 1 and 2 submitted that since the petitioner was not given an opportunity to put forth their case, the impugned orders, passed by the second respondent on 31.10.2003, can be set aside and in the event of any tax, payable by the petitioner, the second respondent may be given liberty to issue fresh notice and pass orders in accordance with law.

6. In these circumstances, since the petitioner was not given an opportunity prior to the passing of recovery proceedings dated 31.10.2003, the proceedings of the second respondent dated 31.10.2003 are liable to be set aside and accordingly, they are set aside. In case of any tax, payable by the petitioner, the

second respondent is at liberty to issue fresh notice to the petitioner and the petitioner can give his explanation for the notice and after hearing the petitioner's submissions, the second respondent is at liberty to pass orders afresh.

7. With these observations, all the writ petitions are allowed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sr

To

1. The Assistant Commissioner (CT),
Tirupur

2. The Commercial Tax Officer,
Central - I, Tirupur

1 cc to Spl.Government Pleader (T), sr. 8718

W.P.Nos.6241 to 6245
of 2004

SCD (CO)
kk 25/2