IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29152 & 29360 OF 2015 &
M.P.Nos.1,1, 2 & 3 of 2015

M/s.Silicon Valley Auto Components P.Ltd.
Rep by its Asst. Genl. Manager Finance &
Accounts/Authorised Signatory
Ms.Meeira Rangachary
Chengalpet. .. Petitioner in W.P.No.29152 of 2015

M/s.Silicon Valley Progress Werk Private Ltd.,
Rep by its Asst. Genl. Manager Finance &
Accounts/Authorised Signatory
Ms.Meeira Rangachary
Chengalpet. .. Petitioner in W.P.No.29360 of 2015

Vs

1 The Additional Commissioner (CT)
Chennai South, Ezhilagam,
Chepauk, Chennai 600 005.

2 The Assistant Commissioner (CT)
Chengalpet Assessment Circle
No.16-A, 1st Main Road,
Anna Nagar, Chengalpet- 603 001.
.. Respondents in both W.Ps.

PRAYER IN W.P.No.29152 of 2015

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus, to forbear the 2nd respondent from taking any coercive steps by bring the immovable property of the petitioner for auction for recovery of the Deferred Sales Tax payable by the petitioner under the agreement dated 29.7.1999 till the disposal of the R.P.No.19 of 2015 dt 28.8.2013 pending consideration before the 1st respondent.

PRAYER IN W.P.No.291360 of 2015

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus, to call for the records of the 2nd respondent having Ref.Na.Ka.No.2135/2013/A3, dated 04.09.2015, and quash the same and consequently, permit the petitioner to pay the deferral sales tax dues of Rs.17,00,357/- to the Additional Commissioner, Commercial Tax Department, Government of Tamil Nadu 1st respondent herein by 36 monthly instalments by taking credit for the input tax credit of Rs.6,18,257/- in its account.

For Petitioner : Mrs.C.Uma

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mrs.C.Uma, learned counsel appearing for the petitioner in both the Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents in both the Writ Petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions themselves are taken up for final disposal.

2.The petitioners are Private Limited Companies and though they are two different Companies, they are managed by the same set of Directors. One of the Companies viz. petitioner in W.P.No.29152 of 2015 is M/s Silicon Valley Auto Components P.Ltd. (herein after referred to as 'Auto Components') and the Writ Petitioner in W.P.No.29360 of 2015 is M/s. Silicon Valley Progress Work Private Ltd., (hereinafter referred to as the 'Progress Work Projects'). Both the Companies had the benefit of IFST deferral and it is admitted fact that both of them defaulted and lost the benefit of the Scheme, as a result of which, action have been initiated by the respondent Department for recovery of Sales tax.

3(i) In W.P.No.29152 of 2015, the petitioner-'Auto Components', has sought for issuance of a writ of mandamus to forbear the second respondent from taking any coercive steps by bringing the immovable property for sale of recovery of the Deferred Sales Tax, till the disposal of the R.P.No.19 of 2015, which has been filed against the order passed by the Deputy Commissioner (CT) Kancheepuram, dated 09.07.2013, and they have sought for restoration of the Deferral Agreement with the

Assistant Commissioner (CT), Zone XI and permission to grant IFST.

(ii) Both the Writ Petitions were entertained and an order of stay was granted in the case of 'Auto Components', subject to the condition that the petitioner pays Rs.15,00,000/- (Rupees fifteen lakhs only), within a period of four weeks and in the case of 'Progress Work Projects', a sum of Rs.5,00,000/- (Rupees five lakhs only) was directed to be paid within a period of four weeks. Admittedly, both the conditional interim orders have not been complied with. But, it is stated that the petitioners have filed Applications for extension of time. Those Applications which have been filed during October 2015, are pending without any progress. Therefore, at this juncture, there would not be any necessity to consider those Applications.

(iii) The property brought for sale as mentioned in the impugned order in W.P.No.29360 of 2015, is said to have been offered as a collateral security for securing loan from the Indian Bank and the said Bank is the Secured Creditor. It is stated that the Bank has also raised certain objections before the second respondent, on coming to know about the impugned notice dated 04.09.2015. Thus, as on date, the property in question has not been brought for auction.

(iv) The second limb of the prayer sought for by the petitioner, is to permit them to pay the deferral amount in instalments and also for giving credit to the Input Tax Credit to the tune of Rs.6,18,257/-, which according to them are available to their account.

(v) Though such a prayer has been made in the Writ Petition, there appears to have been no such specific request made to the Assessing Officer to permit them to pay the loan in instalments nor adjustment of the ITC, which is alleged to be available to the credit of the petitioner.

4.In so far as W.P.No.29152 of 2015, is concerned, it is seen that the Revision Petition is still pending and since the Revisional Authority has stated that he has no power to grant any interim order, in my view, if the action is taken for recovery of the deferred sales tax amount when the Revision is pending, it will render the Revision itself as infructuous, and therefore recovery should remain stayed till disposal of the revision petition.

5.In the light of the above stand, this Court is inclined to dispose of the Writ Petitions on the following terms:

(a) In so far as W.P.No.29360 of 2015 is concerned, the petitioner is directed to submit a representation to the second respondent, clearly setting out the relief they seek and on receipt of the said representation, the second respondent viz. the Assistant Commissioner (CT), Chengalpet, shall consider the same on merits and in accordance with law. While doing so, if any objection has been received from the Indian Bank, the same shall also be considered and common order be passed, within a period of four weeks from the date of receipt of a copy of this order.

(b) In so far as W.P.No.29152 of 2015 is concerned, the Joint Commissioner (CT), Chennai City, Chennai-6, is directed to consider and dispose of the Revision Petition filed on 28.8.2013, which according to the petitioner has been taken on file in R.P.No. 19 of 2015 and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing, within a period of three weeks from the date of receipt of a copy of this order. It is made clear that till the orders are passed, no action for recovery shall be made.

The Writ Petition are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1 The Additional Commissioner (CT)
Chennai South, Ezhilagam,
Chepauk, Chennai 600 005.

2 The Assistant Commissioner (CT)
Chengalpet Assessment Circle
No.16-A, 1st Main Road,
Anna Nagar, Chengalpet- 603 001.

3 The Joint Commissioner,
Chennai City, Chennai-6.

+1cc to the Special Government Pleader Sr.46435
+2 cc to Mrs.C.Uma, Advocate sr.46323, 46324

W.P.Nos.29152 & 29360 OF 2015

ca[co]
srg 08/09/2016