IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22189 of 2016
&
W.M.P.No.18926 of 2016

M/s.Appollo Distilleries (P) Ltd.,
Rep. by its Authorised Signatory,
Mr.K.Murali,
Empee Tower, No.59, Harris Road,
Pudupet, Chennai - 600 002. ... Petitioner

vs.

1.The Joint Commissioner,
Commerical Taxes (CENTRAL),
Greams Road, Chennai - 600 006.

2.The Assistant Commissioner (CT),
Commercial Taxes,
Egmore Assessment Circle, Spurtank Road,
Chennai - 600 031.

3.The Tamil Nadu State Marketing Corporation Ltd.,
Represented by its Managing Director,
(TASMAC) 4th Floor, CMDA, Tower II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the 2nd respondent relating to the Notice in Form 'U' dated 23.06.2016 for the month of May 2016 in Assessment No.TIN/33400442671/2016-17 and quash the same and direct the respondents 1 and 2 to grant 16 weeks time to the petitioner to pay the present VAT arrears and interest for a total sum of Rs.6,38,51,200/- (Rupees Six Crores Thirty Eight Laksh Fifty One Thousand and Two Hundred only).

For Petitioner : Mr.J.Ravindran

For Respondents: Dr.Anitha Sumanth
Special Government Pleader (R1 and R2)
Mr.C.Kasirajan (R3)

O R D E R

Heard Mr.J.Ravindran, learned counsel appearing for the petitioner, Dr.Anitha Sumanth, learned Special Government Pleader appearing for the respondents 1 & 2 and Mr.C.Kasirajan, learned counsel appearing for the third respondent and with their consent, these Writ Petition is taken up for final disposal.

2.In this writ petition, the petitioner had challenged a notice issued to the petitioner, calling upon the petitioner to pay a sum of Rs.6,38,51,200/- payable in terms under Section 45 of the Tamil Nadu Value Added Tax Act, 2006, failing which the petitioner was informed that it will be a charge on the property. When this writ petition came up for admission before this Court on 28.06.2016, the learned counsel appearing for the petitioner pointed out that on five earlier occasions, this Court has passed orders in five writ petitions filed by the petitioner, wherein the petitioner was permitted to pay the amount together with interest in twelve weekly installments.

3.At the time of admission on 28.06.2016, this Court posed a question to the learned counsel appearing for the petitioner stating that as to how this Court could issue a writ of Mandamus directing the payment of tax in installments when the statute mandates that returns should be accompanied with payment of tax. The reply of the learned counsel appearing for the petitioner was that such objections was raised by the respondents 1 and 2 even in the earlier writ petition, but the Court came to the conclusion that since already in four writ petitions orders have been passed, it does not want to deviate. This Court was not convinced with such argument and therefore, the learned Special Government Pleader was directed to get instructions from the respondents.

4.Today (05.07.2016), counter affidavit has been filed along with the typed set of papers and it is pointed out that the averments made in the affidavit filed in support of the writ petition are verbatim copies of the earlier writ petitions. Further, it is submitted that the writ petitions itself are misconceived and on account of misinterpretation of the provisions of Section 42(3) of the Tamil Nadu Value Added Tax Act and the reference to 'installments' in Section 42(3) is at the discretion of the Assessing Officer and that has to be exercised sparingly and in exceptional circumstances. Therefore, it is submitted that the apparent pattern adopted by the petitioner is to seek the same as a matter of right which should not be permitted by this Court. Further it is submitted that the writ appeals have been preferred against the order in the writ petitions and therefore, the prayer has been made to reject the writ petition as they are abuse of process of Court. It is further pointed out that in respect of another group Company, a similar contention was raised before this Court in W.P.No.19114 of 2013 and this Court dismissed the writ petition by order dated 19.07.2013 observing that the jurisdiction under Article 226 of the Constitution of India is an equity jurisdiction and the Assessee who retain the tax amount and diverted the funds for other purpose, is not entitled to invoke the said jurisdiction. In yet another order in W.P.No.14276 of 2014, wherein similar prayer was made, the Court dismissed the writ petition by order dated 03.06.2014 pointing out that it may be true that the petitioner has got its own financial constraint, but that cannot be a ground for quashing the demand notice demanding the amount payable to the Government.

5.However, the learned counsel appearing for the petitioner, on instructions, seeks permission of this Court to withdraw the writ petition and has made an endorsement to the said effect.

6.In the light of the above, the writ petition stands dismissed as withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Joint Commissioner,
Commerical Taxes (CENTRAL),
Greams Road, Chennai - 600 006.

2.The Assistant Commissioner (CT),
Commercial Taxes,
Egmore Assessment Circle, Spurtank Road,
Chennai - 600 031.

1 cc to M/s.J.Ravindran, Advocate, sr.37680
1 cc to The Special Government Pleader,(T), sr.38200

W.P.No.22189 of 2016 &
W.M.P.No.18926 of 2016

eu vo
kra 19.07.2016