IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.31521 to 31524/2016 & WMP Nos.27355 to 27360/2016

M/s.NEPC Textiles Ltd.,
rep.by its Company Secretary
SF No.256, Trichy Road, Kannamapalayam
Post, Coimbatore 641 402.
..Petitioner in all the writ petitions

Versus

1.The Commercial Tax Officer
Palladam, Palladam-641 664.

2.The Sub Registrar
Sulur 641 492.

3.The Joint Commissioner of Commercial
Taxes, Coimbatore, Coimbatore 641 018.

4.NEPC Agro Foods Ltd
Mount Steward Estate
Valparai, Pollachi 642 127.
.. Respondents in all the writ petitions.

Prayer in WP.Nos.31521 & 31522/2016:- Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records on the file of the 1st respondent in Na.Ka.No.3215/2003/A dated 13.03.2015 and dated NIL October 2007 respectively, from the files of the 1st respondent and quash the same.

Prayer in WP.No.31523/2016:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to forthwith withdraw/recall the proceedings relating to a tax demand of Rs.1,61,74,956/- [Rupees One crore sixty one lakhs seventy four thousand nine hundred and fifty six only] as reflected in the Encumbrance Certificate found on the files of the 2nd respondent.

Prayer in WP.No.31524/2016:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to forthwith withdraw/recall the proceedings in Na.Ka.No.3215/2003/A3 dated 13.03.2015 relating to a tax demand of Rs.5,04,35,540/- [Rupees Five crores four lakhs thirty five thousand five hundred and forty only] as reflected in the Encumbrance Certificate found on the files of the 2nd respondent.

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| For Petitioner in all WPs | : | Mr.N.Sriprakash, assisted by Mr.Adhithya Reddy |
| For RR 1 & 3 in all WPs | : | Mr.K.Venkatesh, GA [Taxes] |
| For R2 in all WPs | : | Mr.V.S.Ramesh, GA |

COMMON ORDER

Heard Mr.N.Sriprakash, learned counsel assisted by Mr.Adhithya Reddy, learned counsel appearing for the petitioner ; Mr.K.Venkatesh, learned Government Advocate [Taxes] accepting notice on behalf of the respondents 1 and 3 and Mr.V.S.Ramesh, learned Government Advocate, accepting notice on behalf of the 2nd respondent and with the consent on either side, the writ petitions are taken up for final disposal.

2 The petitioner in all these writ petitions is a company incorporated under the Companies Act and in WP.Nos.31521 and 31522/2016, they have sought for issuance of a writ of certiorari to quash the notice dated 13.03.2015, which is a notice of attachment and another undated notice in Na.Ka.No.3215/2003/A3 dated Nil.October, 2007, which is also a notice of attachment. In the other two writ petitions, viz., WP.Nos.31523 & 31524/2016, the petitioner has sought for withdrawal of the tax demand made by the 1st respondent as reflected in the Encumbrance Certificates found on the file of the 2nd respondent.

3 The facts which are necessary for the disposal of these writ petitions could be summarised as hereunder:-

[a] The petitioner is a manufacturer of cotton yarn and had its manufacturing unit at Trichy Road, Coimbatore. During the year 1997, they undertook large scale expansion and needed support in the form of tax benefits for effectively implementing the expansion and applied and secured the Eligibility Certificate from SIPCOT in terms of G.O.Ms.No.92, Commercial Taxes and Religious Endowments Department, dated 22.02.1991, and G.O.Ms.No.48, Commercial Taxes and Religious Endowments Department, dated 11.02.1994. Thereafter, the petitioner entered into an agreement with the Assistant Commissioner [CT], Tiruppur, referred to as a Deed of Agreement for demanding payment of Deferred Sales Tax, Deemed Re-loaning

and Recovery of Loan dated 14.07.1997. In terms of the Eligibility Certificate and the Agreement, the petitioner became entitled to interest free sales tax benefits for a period of seven years from 01.04.1997 to 31.03.2004 with a repayment obligation to operate between 01.04.2006 and 01.04.2012. The petitioner states that it had promptly made the repayment of IFST from 01.04.2004 to 31.03.2006 and thereafter, due to severe financial difficulties, the petitioner had defaulted in their repayment obligation. On account of the default committed by the petitioner, the 1st respondent passed the Assessment Orders under the various Enactments from time to time between the years 2011 and 2014 raising a total demand of Rs.6,39,75,264/- and after the petitioner filed the statutory declaration forms, they were taken into consideration and revised Assessment Orders under the Central Sales Tax Act, for the years from 2004-05 to 2007-08 were passed on various dates, as a consequence of which, the outstanding dues reduced to Rs.2,54,82,040/- and this amount included IFST of Rs.1,81,65,927/-. The petitioner's specific case is that the entire liability was completely extinguished between January and March, 2016 and the details of payments effected by the petitioner are given in a tabulated form in the affidavit filed in support of this writ petition, which is quoted herein below:-

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| IFST payment [Rs.1,81,65,927/-] | Rs.15,00,000/- | DD dated 12.01.2016 |
| | Rs.25,00,000/- | DD dated 21.01.2016 |
| | Rs. 1,35,08,258/- | DD dated 29.01.2016 |
| | Rs. 6,57,669/- | DD dated 25.02.2016 |
| Other dues [Rs.73,16,976/-] | Rs.73,16,113/- | DD dated 10.03.2016 |

[b] The petitioner's further case is that the above payments which had been made by the petitioner, has been given effect to and recognised in the enclosure to the proceedings of the 1st respondent in its order dated 16.03.2016. As stated above, after 2006, the petitioner defaulted in payment, as a result of which, in October 2007, the 1st respondent attached the properties of the petitioner for recovery of the sales tax arrears of Rs.1,61,74,946/- and subsequently, the revenue recovery proceedings were also initiated to bring the petitioner's property for auction sale. The petitioner was constrained to file a suit in OS.No.58/2011 on the file of the Sub Court, Pollachi, for a permanent injunction to restrain the Department from bringing the properties for sale and a temporary injunction was granted by the Civil Court. Thereafter, nothing happened and ultimately, the suit is said to have become infructuous on account of the fact that the petitioner had extinguished the entire sales tax due. On 13.03.2015, once again the petitioner's properties at Trichy Road at Coimbatore,

was attached for recovery of sales tax dues amounting to a sum of Rs.5,04,35,540/-. Thereafter, nothing happened. However, the attachment still continues to operate in existence in spite of the fact that the petitioner has completely discharged all its sales tax arrears.

[c] After the petitioner had extinguished the entire arrears of sales tax on 16.03.2016, the 1st respondent issued a notice, demanding interest u/s.24[2] of the Tamil Nadu General Sales Tax Act being calculated on the belated repayment of IFST by the petitioner. The petitioner submitted its objections on 26.05.2016. However, the 1st respondent has passed an order dated 16.06.2016, confirming the interest demand of Rs.4,22,33,296/-. Aggrieved by the same, the petitioner has filed a revision u/s.54 of the Tamil Nadu Value Added Tax, 2006, along with a stay petition before the 3rd respondent and the 3rd respondent has directed the petitioner to pay 25% of the interest due, vide proceedings dated 17.08.2016 and this having been passed without notice to the petitioner, the petitioner has filed an application on 29.08.2016 before the 3rd respondent for grant of an order of interim stay. The petitioner's case is that the attachment/encumbrances created on the petitioner's immovable properties were only for the recovery of the tax dues from the petitioner and all those dues having been paid by the petitioner, the attachments and encumbrances cannot continue to operate.

[d] The petitioner's request dated 17.03.2016 to lift the attachments / encumbrances has not been considered till date. Therefore, the petitioner is before this Court, seeking to quash the attachment notices and encumbrances and also to withdraw the proceedings issued relating to the tax demand reflected in the encumbrance certificates in the office of the Sub Registrar, Sulur, the 2nd respondent herein.

4 On a perusal of the notice dated 16.03.2016, which is a notice calling upon the petitioner to pay the interest at the rate of 24% per annum under section 24[2] of the TNGST Act, is on account of the belated payment of IFST. On a perusal of the notice, it is evidently clear that the 1st respondent has accepted the fact that the entire amount has been paid ; but according to the 1st respondent, as the payment was belated, the petitioner is liable to pay interest on the said amount. Along with the notice dated 16.03.2016, an annexure has been appended, from which it is seen that the 1st respondent has stated that the total demand was Rs.2,54,82,903/-, thereby the petitioner has paid in excess, Rs.863/-. In the light of the above facts, which appear to be undisputed, the question would be as to whether the attachments and encumbrances can still continue.

5 Admittedly, these attachments / encumbrances were effected in the year 2007 for the arrears of the tax payable by the petitioner which was quantified at Rs.1,61,74,946/- and the subsequent attachment in the year 2015 towards recovery of arrears of Rs.5,04,35,540/-. The 1st respondent has admitted to the fact that this amount has been fully paid by the petitioner. Therefore, the 1st respondent cannot still continue to hold all the petitioner's properties and refuse to delete the amount in the attachments / encumbrances.

6 It is contended by the learned Government Advocate [taxes] appearing for the respondents 1 and 3 that the proceedings demanding interest, has culminated in an order dated 16.06.2016 wherein the interest amount of Rs.4,22,33,296/- is recoverable from the petitioner. Therefore, the Department would be justified in retaining the attachment. However, this Court is not inclined to accept the said submission for the simple fact that the said demand dated 16.06.2016 towards interest is the subject matter of challenge before the 3rd respondent by way of a revision. Apart from that, there is also a stay petition. Even assuming that the petitioner is unable to succeed before the revisional authority or before the other hierarchy of remedies available to them under the Act, even then, the petitioner cannot automatically be declared as a defaulter. After the matter had be taken to the logical end, a demand has to be served on the petitioner and the time, as stipulated under the Act, has to be given for effecting payment. If in spite of such a time having been granted, the petitioner fails to comply with the demand, then only action can be initiated for recovery of the amount by other modes as stipulated under the Act and the rules framed thereunder. In other words, it only at that point of time, the petitioner can be construed to be a defaulter. The revision petition filed u/s.54 of the Act against the order dated 16.06.2016 is a continuation of the original proceedings. Therefore, the said demand dated 16.06.2016 cannot be construed to have attained finality as on date. Therefore, there is every justification for the petitioner to seek for lifting the attachments / encumbrances over the properties which, according to the petitioner, is worth more than Rs.6.75 Crores, in terms of the guideline value fixed by the local body. The petitioner's request for lifting the attachments / encumbrances has not been considered by the 1st respondent till date.

7 Thus, taking note of the above facts and in the light of the clear admission that the petitioner has cleared the entire tax liability and in fact, there is an excess of Rs.863/-, the 1st respondent should consider the petitioner's representation dated 17.03.2016, taking note of the observations made by this Court in this order and pass appropriate orders on

merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of three weeks from the date of receipt of a copy of this order.

8 The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer
Palladam, Palladam-641 664.

2.The Sub Registrar
Sulur 641 492.

3.The Joint Commissioner of Commercial
Taxes, Coimbatore, Coimbatore 641 018.

+1cc to Mr.Adithya Reddy, Advocate Sr.52050
+1cc to the Special Government Pleader Sr.52144
+1cc to the Government Pleader Sr.52231

WP.Nos.31521 to 31524/2016

MP 1[co]
srg 27/09/2016