IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.32598 & 32599 of 2016
and W.M.P.Nos.28249 to 28252 of 2016

M/s. Neycer India Limited,
Represented by its Senior Manager (Finance),
Mr. T.Mani,
No.145 St. Mary's Road, Alwarpet,
Chennai - 600 018 ... Petitioner in both W.Ps.

Versus

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Commercial Taxes Department, Fort St. George,
   Chennai - 9.

2. The Assistant Commissioner (CT), Cuddalore Taluk Asst. Circle,
   Sub-Jail Road, Manjakuppam,
   Cuddalore - 607 001.

3. The Branch Manager, Indian Overseas Bank,
   Vadalur Branch,
   Cuddalore.

4. The Branch Manager, Bank of India,
   Chennai Corporate Banking Branch,
   826 Anna Salai,
   Chennai. .. Respondents in both W.Ps.

Prayer:- Petitions filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned bank attachment order, in Form U in Rc.A3/724/2016, dated 02.09.2016 on the file of the second respondent, quash the same and to direct the second respondent to dispose the rectification petitions filed against TNGST assessment order, dated 11.05.2011.

For Petitioner
in both W.Ps. :Mr. B.Kumar, Sr. Counsel,
for, Mr. T.Shanmugam

For Respondents
in both W.Ps. :Mr. S.Kanmani Annamalai,
AGP (T)

COMMON ORDER

Heard Mr.B.Kumar, learned Senior Counsel, assisted by Mr.T.Shanmugam, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for respondents, in both the writ petitions. By consent of the learned counsel for both sides, the writ petitions are taken up for final disposal.

2. The petitioner, in both these writ petitions, is a company incorporated under the Indian Companies Act, 1956, having its registered office at Chennai and its factory at Vadalur, Cuddalore District. In these writ petitions, the petitioner has challenged the notice, issued in Form U by the second respondent, attaching the petitioners' Bank accounts, with respondents 3 and 4, for recovery of the tax arrears for the assessment year 2001-02.

3. Though elaborate submissions were made by the learned counsel for both sides, the dispute, which arise for consideration, in these writ petitions, lies in a very narrow campus.

4. Admittedly, the petitioner has been declared as a Sick Industrial, undertaking under the provisions of the SICA Act and the BIFR has framed a scheme for rehabilitation, vide order, dated 17.10.2008 in Reference No.29/1992. Though there might have been orders passed earlier for the purpose of these cases, it would suffice to refer to the order, dated 17.10.2008, which specifically deals with the dues to the Government of Tamil Nadu, inclusive of the dues to the Sales Tax Department.

5. Earlier, the second respondent issued a notice, dated 29.09.2014, claiming arrears of sales tax for the years 1994-95 to 2006-07, claiming the same to be payable in terms of the orders passed by the BIFR. On receipt of such notice, the petitioner had sent a reply, on 20.10.2014, pursuant to which, the second respondent dealt with the reply and served the notice of demand dated 22.04.2015. It cannot be disputed by the second respondent that the period for which the arrears were claimed would include the period, which is the subject matter of this

writ petition, namely, 2001-02. The notice, dated 22.04.2015, demanding arrears of sales tax was put to challenge by the petitioner in W.P.No.13900 of 2015 and the Court, having been prima facie satisfied, granted an order of interim stay on 28.07.2015, which was subsequently extended until further orders. The said writ petition is pending before this Court and the interim orders are in force. While so, the impugned proceedings came to be issued, demanding arrears of sales tax, both under the TNGST Act and CST Act, for the year 2001-02.

6. Firstly, because of the pendency of the earlier writ petition and the interim order being in force, the respondents could not have issued the present order of attachment in Form U, as it is seen that the period covered in the earlier order, dated 22.04.2015, which is the subject matter of challenge in W.P.No.13900 of 2015 is from 1994-95 to 2006-07, i.e., inclusive of 2001-02. This would be sufficient to set-aside the impugned proceedings.

7. However, one more important aspect to be taken note of is that the petitioner / company has been revived, pursuant to the scheme of rehabilitation and the Sales Tax Department was also a part of the process, while framing the scheme and at this stage, it would be relevant to take note of the order passed by the BIFR, dated 17.10.2008, with particular reference to the Sales Tax dues and the relevant portion of the order is quoted herein below:-

> "10. (1) State Government of Tamil Nadu.
>
> .....
>
> 3. The Sales Tax Department to desist from taking any coercive steps whatsoever to collect the arrears of Rs 534 lacs being demanded by them on the basis of assessments completed out of which some are under rectification as well as additional deposits of Rs.155 lacs arbitrarily demanded by the department after the introduction of VAT in Tamil Nadu.
>
> 4. The Sales Tax Department to re-assess the assessment for various years upto 2006-08. The Company's rectification petitions from the year 1997-98 to 2000-01 are pending before the authorities, the allowance of which according to law entitle the company to a reduction in sales tax liability to the extent of Rs.175 lacs and help to reduce the demand made by the Department.

5. The sales tax Department to accept a down payment of one-third of the total demand as assessed and the balance in twelve equal quarterly instalments in the three succeeding financial years.

6. The sales tax department to permit interest free deferral of the sales tax dues arising after restructure and rehabilitation by five years.

7. The Deputy Commercial Commercial Tax Officer, Cuddalore - 1 to dispose the proceedings of remand in TNGST No.584024/94-95 dated 31.12.2002 in relation to Asst for the year 1994-95 taking into due consideration the company's reply dated 6.2.03 to the proposals of the Deputy Commercial Tax Officer and further to direct the said Dy Commercial Tax Officer or other officer of the Commercial Tax Department to refrain from any coercive or distraint proceedings of any nature till such disposal.

8. To exempt the company from all penalties, penal charges, including interest, interest on interest, etc., and all other levies of such nature levied or leviable for late payments of sales tax, late filing of returns, etc.,

...

11. The company should reconcile the Sales Tax amount due with the Commercial Tax Dept, Cudalore, and if it is more than the sum of Rs.230 lacs indicated in the scheme, the increased amount, if any, should be paid to them in terms of para-10(B) 5 above. The additional amount required should be brought-in by the promoters as interest free unsecured loan.

..."

8. The learned Senior Counsel appearing for the petitioner would submit that whatever directions, issued to the petitioner / company by the BIFR, have been complied with and an amount of Rs.230 lacs has been paid.

9. Nevertheless, the second respondent is insisting upon the payment of penal charges, interest, penalties, etc., which have been clearly exempted from payment, pursuant to the scheme of rehabilitation to which the Government of Tamil Nadu, including the Sales Tax Department were parties. This is also one more reason to lift the impugned order of attachment.

10. Therefore, for the reasons stated above, these writ petitions are allowed and the impugned attachment notice is quashed. It is left open to respondents 1 and 2 / Department to contest the writ petition pending before this Court in W.P.No.13900 of 2015 and the observations made in this order will not, in any manner, prejudice the interest of the Revenue, while they contest the said writ petition. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government, State of Tamil Nadu,
   Commercial Taxes Department,
   Fort St. George, Chennai - 9.

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   Cuddalore Taluk Asst. Circle,
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   826 Anna Salai, Chennai.

+2cc to Mr.T.Shanmugam, Advocate Sr.55090

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& W.M.P.Nos.28249 to 28252 of 2016

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srg 28/09/2016