IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.28285 of 2004

M/s.Shri Ramalinga Mills Ltd.,
rep.by its Chairman Mr.T.R.Dhinakaran
Aruppukottai ... Petitioner

Vs

1. The Commercial Tax Officer,
   Arupukkottai.

2. The Assistant Commissioner of
   Commercial Taxes, Virudhunagar.

3. The State Industries Promotion
   Corporation of Tamil Nadu Limited,
   (Government of Tamil Nadu
   Undertaking), No.19-A, Rukmani
   Lakshmipathi Road, Chennai-8.

4. The Joint Commissioner of Commercial
   Taxes (Revision Petition) (FAC),
   Chennai-5. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the fourth respondent herein in R.P.No.JJ1/185/2003 dated 24.5.2004 upholding the proceedings of the first respondent in TNGST/922621/1993-94 dated 17.8.2001 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondents 1, 2 & 4 : Mr.S.Manohar Sundaram,
Additional Government Pleader

For Respondent-3 : Mr.P.S.Seetharaman

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner, Mr.S. Manohar Sundaram, learned Additional Government Pleader for respondents 1, 2 and 4 and Mr.P.S.Seetharaman, learned counsel appearing for the third respondent. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order passed by the Revisional Authority dated 24.5.2004. A second revision has been filed before the Revisional Authority, who is the fourth respondent, against the order passed by the First Revisional Authority namely the Deputy Commissioner (CT), Tirunelveli in R.P.No.52/02 dated 23.6.2003. The fourth respondent herein, who is entitled to examine all the facts, considered the matter in great detail, re-appreciated the stand taken by the petitioner before the First Revisional Authority and rendered a finding that the petitioner is liable to pay penal interest.

3. The liability to pay penal interest is based upon the factual issue as to whether the petitioner committed default in payment of tax consequent upon cancellation of the IFST deferral agreement. The factual matrix has been clearly set out by the Second Revisional Authority pointing out that under the IFST scheme, once the assessee filed returns, the amount should be deemed to have been paid and was treated as loan as per G.O.No.48 dated 11.2.1994, that therefore, the repayment was governed by the various Government Orders issued under IFST scheme and that even the payment of interest was governed by a separate clause in the loan agreement prescribing an interest at 2% p.m.

4. In such circumstances, this Court does not propose to examine the impugned order as if acting as a Second Revisional Authority over the order passed by the fourth respondent.

5. In the light of the above, the writ petition fails and is accordingly dismissed. No costs.

6. After the above order was dictated, the learned counsel for the petitioner submitted that liberty may be granted to the petitioner to move the Government for waiver.

7. Liberty sought for by the petitioner is granted and the petitioner is permitted to move the Government for waiver.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commercial Tax Officer,
Arupukkottai.

2.The Assistant Commissioner of Commercial Taxes,
Virudhunagar.

3.The State Industries Promotion Corporation
of Tamil Nadu Limited,
(Government of Tamil Nadu Undertaking),
No.19-A, Rukmani
Lakshmipathi Road, Chennai-8.

4.The Joint Commissioner of Commercial Taxes
(Revision Petition) (FAC),
Chennai-5.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.38650
+1cc to the Government Pleader, S.R.No.38400

W.P.No.28285 of 2004

KS(CO)
CA(23/07/2016)