In the High Court of Judicature at Madras

Dated : 14.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24657 of 2017 & WMP.No.26018 of 2017

M/s.Empee Distilleries Ltd., rep.by
its Chairman M.P.Purushothaman ...Petitioner

Vs

1.The Commissioner of Commercial
Taxes, Government of Tamil Nadu,
Chepauk, Chennai-5.

2.The Joint Commissioner, Commercial
Taxes CT, Large Tax Payers Unit,
Chennai-8.

3.The Deputy Commissioner,
(Commercial Taxes CT-I), Large Tax
Payers Unit, No.34, Marshalls Road,
Chennai-8.

4.The Tamil Nadu State Marketing
Corporation Ltd., rep.by its Managing
Director (TASMAC), 4th Floor,
CMDA Tower-II, Gandhi Irwin
Bridge Road, Egmore, Chennai-8. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent by his proceedings pertains to the Notice in Form U dated 31.8.2017 in TIN No.33980640189/2017-18 for the return month of July 2017, quash the same and direct respondents 1-3 to grant 10 months time to the petitioner to pay the present VAT arrears and interest for the total of Rs.34,68,83,092/- (Rupees Thirty Four Crores Sixty Eight Lakhs Eighty Three Thousand and Ninety Two Only).

For Petitioner : Mr.P.Bakiyaraj
For Respondents 1 to 3: Mr.S.Kanmani Annamalai, AGP
For Respondent-4 : Mr.John Kennedy

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for respondents 1 to 3. Mr.John Kennedy, learned Standing Counsel accepts notice for the fourth respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by a notice of attachment/garnishee order passed by the third respondent directing the fourth respondent to pay the Commercial Tax Department a sum of Rs.34,68,83,092/- being the value added tax arrears payable by the petitioner.

3. The learned counsel for the petitioner has drawn the attention of this Court to the order passed by this Court in W.P.No.10573 of 2017 filed by the petitioner for a similar relief in respect of the tax payable for the earlier period.

4. It is seen that after contest, the said writ petition was disposed of by order dated 28.4.2017 permitting the petitioner to pay arrears in four monthly instalments. Subsequently, the petitioner filed WMP.No.13011 of 2017 seeking to clarify the order dated 28.4.2017 as to the effect of the impugned proceedings therein. This Court, vide order dated 08.5.2017, clarified permitting the petitioner to pay the arrears with interest in four monthly instalments commencing from 25.5.2017 and respondents 1 to 3 were directed to keep the garnishee order in abeyance till the petitioner completes the payment of entire arrears.

5. The learned Additional Government Pleader submits that respondents 1 to 3 preferred an appeal as against the said directions and that the Hon'ble Division Bench of this Court dismissed the writ appeal. Further, the petitioner has duly and faithfully complied with the directions issued by this Court in the order dated 08.5.2017 and the entire arrears along with interest have been cleared.

6. It is submitted by the learned counsel for the petitioner that on account of severe financial crunch and since the policy of the Government with regard to liquor trade is in a nebulous state, the petitioner is unable to raise finances from the open market and therefore, pleads that the petitioner may be granted sufficient time to pay arrears with interest in equated monthly instalments.

7. The learned Additional Government Pleader, while seeking to sustain the impugned attachment notice, would submit that the petitioner is bound to clear the tax arrears and granting indulgence to the petitioner, as sought for by them, would affect the interests of the Revenue.

8. After hearing the learned counsel on either side and perusing the materials placed on record, in particular, the order passed in the earlier writ petition, this Court is inclined to grant some indulgence to the petitioner considering the fact that the petitioner is undergoing severe financial crisis.

9. Accordingly, the writ petition is disposed of directing the petitioner to pay the entire arrears of tax together with applicable interest in five equal monthly instalments. The first of such instalment shall be paid on or before 25.9.2017 and all the subsequent instalments shall be paid on 25th of every succeeding month. Subject to compliance of the above condition, the third respondent is directed to keep in abeyance the impugned Form U notice/ garnishee order. If the petitioner fails to pay any one of the instalments within the time stipulated by this Court, the impugned Form U notice/ garnishee order will stand automatically revived without any further reference to this Court. On the petitioner clearing the entire arrears along with interest as per the time frame fixed by this Court, the third respondent shall lift the order of attachment/garnishee order. No costs. Consequently, the above WMP is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

RS

To

1.The Commissioner of Commercial Taxes, Government of Tamil Nadu, Chepauk, Chennai-5.

2.The Joint Commissioner, Commercial Taxes CT,
Large Tax Payers Unit,
Chennai-8.

3.The Deputy Commissioner, (Commercial Taxes CT-I), Large Tax Payers Unit, No.34, Marshalls Road, Chennai-8.

4.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC), 4th Floor,
CMDA Tower-II, Gandhi Irwin Bridge Road, Egmore,
Chennai-8.

+ 1 cc to Mr.P.Bakiyaraj, Advocate,SR.67178
+ 1 cc to The Special Govt.Pleader, SR.66924
+ 1 cc to Mr.John Kennedy, Advocate,SR.67509

WP.No.24657 of 2017&
WMP.No.26018 of 2017

SCD(CO)
NR 15/09/2017