IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06.10.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.Nos. 25489 to 25491 of 2017
and
W.M.P.Nos. 26918 to 26920 of 2017

M/s. Oceanic Tropical Fruits Private Limited,
Rep. by its Managing Director A. Joseb Raj,
Having Office at:
No.6, Ist Floor,
Wellington Estate,
53, Ethiraj Salai,
Egmore, Chennai - 600 008.

...Petitioner in all the W.Ps

Versus

The Assistant Commissioner (Commercial Tax)
MMDA Colony Assessment Circle,
Chennai - 600 006.

...Respondent in all the W.Ps

Prayer in W.P.No.25489 of 2017:

This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records, relating to the order in proceedings No. in TIN No.33421483233/2016-17/A2 dated 10.07.2017 passed by the respondent, quash the same and issue direction, permitting the petitioner to pay the tax of Rs.41,42,576/- in 10 equated monthly installments.

Prayer in W.P.No.25490 of 2017:

This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order in proceedings No. in TIN No.33421483233/2017-18/A2 dated 10.07.2017 passed by the respondent, quash the same and issue direction, permitting the petitioner to pay the tax of Rs.19,01,682/- in 10 equated monthly installments.

Prayer in W.P.No.25491 of 2017:

This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records, relating to the order in proceedings No. in TIN No.33421483233/2017-18 (CST 870404/2017-18) dated 05.09.2017 passed by the respondent, quash the same and issue direction, permitting the petitioner to pay the tax of Rs.53,08,578/- in 10 equated monthly installments.

For Petitioner
in all the W.Ps : Mr. R. Saravanakumar

For Respondents
in all the W.Ps : Mr. S. Kanmani Annamalai,
Addl. Government Pleader

COMMON ORDER

Heard Mr. R. Saravanakumar, the learned counsel appearing for the petitioner and Mr. S. Kanmani Annamalai, the learned Additional Government Pleader, accepting notice on behalf of the respondent. With consent on either side, these Writ Petitions were taken up together for disposal.

2. The challenge in these Writ Petitions is to the demand notices issued by the respondent, dated 10.07.2017 and 05.09.2017 respectively. By virtue of the impugned demands, the petitioner has been directed to pay the sum of Rs.41,42,576/-, Rs.19,01,682/-, and 53,08,578/-, respectively.

3. When these Writ Petition came up for hearing today (i.e., 06.10.2017), the learned counsels appearing on either side submitted that, a Writ Petition filed by the very same petitioner, seeking for an identical prayer, in W.P.No.23860 of 2017, was dismissed by this Court yesterday (05.10.2017). At this stage, it would be worthwhile to refer to the said order, which reads as follows:-

> "` Heard Mr.N.Surya Senthil, the learned counsel appearing for the petitioner and Mr.V.Sundareswaran, the learned Senior Panel Counsel appearing for the respondents.
>
> 2. The petitioner has filed this Writ Petition, challenging the notice issued by the third respondent, dated 12.07.2017, stating that the petitioner is liable to pay a sum of Rs.64.62 lakhs, whereas, they paid only 20.18 lakhs, and also defaulted the regular duty amount of Rs.70.68 lakhs from April to June 2017. Therefore, the petitioner was informed that, action will be initiated against them under Section 11 of the Central Excise Act, 1944.
>
> 3. When this Writ Petition came up for hearing, this Court granted an interim order on 07.09.2017, directing the petitioner to show their bona fides by paying a sum of Rs.43.08 lakhs in two

installments on or before 22.9.2017, and the said interim order reads as follows :-

> " Heard the learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel accepting notice for the respondents.
>
> 2.The petitioner is aggrieved by the garnishee notice issued by the third respondent for recovery of the arrears of central excise duty.
>
> 3.The first respondent was magnanimous enough to grant permission to the petitioner to pay the arrears in 18 equal monthly instalments of Rs.21.54 lakhs each. However, the petitioner has now paid only four instalments and defaulted in payment of the fifth instalment, which necessitated the third respondent to pass the impugned garnishee notice.
>
> 4.The learned counsel for the petitioner submits that due to financial difficulty, the petitioner could not honour the commitment, but now they are ready and willing to pay the monthly instalments promptly and that some reasonable time may be granted.
>
> 5.To show the bona fides, the petitioner shall pay two instalments namely Rs.43.08 lakhs (Rupees forty three lakhs and eight thousand only) (Rs.21.54 lakhs + Rs.21.54 lakhs) on or before 22.9.2017. Subject to compliance of the above condition, there will be an interim order as prayed for. It is needless to state that the petitioner shall not commit any default in payment

of future instalments. List on 05.10.2017 for further directions."

4. The learned counsel appearing for the petitioner submits that the first instalments of Rs.21.54 lakhs was paid on 11.09.2017, and even before the petitioner could take steps to pay the second installment before 22.9.2017, one of the secured creditors, who had lent monies to the petitioner, viz. ICICI Bank had moved the National Company Law Tribunal (Division Bench) Chennai (NCLT) by filing CP/564(IB)/CB/2017, under Section 7 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016, and the NCLT has passed an order on 13.9.2017, appointing Mr.C.Ramasubramaniam, Insolvency Resolution Professional (IRP) as proposed by the Financial Creditor, and issued other directions to the said IRP.

5. In the light of the above development, the petitioner can no longer maintain the present Writ Petition. Accordingly the Writ Petition stands dismissed. It is open to the respondent/Department to initiate appropriate proceedings for recovery of the dues in accordance with rules. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed." "

4. Following the earlier order, these Writ Petitions are dismissed on the same lines, i.e., leaving it open to the respondent/Department to initiate appropriate proceedings for recovery of the dues in accordance with rules. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (Commercial Tax)
MMDA Colony Assessment Circle,
Chennai - 600 006.

+3cc to Mr.R.Saravanakumar, Advocate Sr.No.72493,72494,72495
+1cc to Special Government Pleader SR.No.72070

RSY(CO)
sm:23.1.2018

W.P.Nos. 25489 to 25491 of 2017