IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20467 of 2004
&
W.P.M.P.No.24630 of 2004

M/s.Asian Bearings Limited,
Rep. by D.Vasudevan,
Deputy General Manager (Finance)
and Authorized Signatory,
14, Peters Road, Royapettah,
Chennai - 600 014. ... Petitioner

Vs.

The Commercial Tax Officer,
Royapettah II Assessment Circle,
46, Greenways Road,
Chennai - 600 028. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI calling for the records on the file of the respondent in TNGST 0780141/2000-01 dated 21.06.2004 and quash the same as being without jurisdiction, invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The petitioner has filed this writ petition challenging the demand notice dated 21.06.2004, by which the respondent has demanded payment of tax and penalty for the assessment year 2000-2001, under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

3.This Court, while entertaining the writ petition, has granted an order of interim stay, as the petitioner had contended that the petitioner has been declared as a Sick Industrial undertaking and the Board for Industrial Finance and Reconstruction (BIFR) had recommended winding up of the company and the company had filed an appeal before the AAIFR and the appeal was pending and therefore, no recovery could be initiated. If the BIFR has recommended for winding up of the company, then obviously, no coercive action can be taken by the Commercial Tax Department for recovery of the arrears of tax and penalty, as they have to approach the Official Liquidator after orders are passed by the company Court.

4. However, it appears that the learned counsel for the petitioner does not have instructions as to what happened to the appeal filed before the AAIFR. In any event, the petitioner company having been ordered to wind up, the question of interference to the impugned demand, does not arise. Hence, the impugned order is set aside giving liberty to the respondent to initiate appropriate proceedings for recovery of tax and penalty before the appropriate forum.

5. In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr/vsm

To

The Commercial Tax Officer,
Royapettah II Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.C.Venkatraman, Advocate, S.R.No.48508
+1cc to the Government Pleader, S.R.No.49129

W.P.No.20467 of 2004

AD(CO)
CA(02/08/2017)