IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2017

CORAM

THE HONOURABLE THIRU JUSTICE T.S.Sivagnanam

W.P.Nos.6490 to 6492 of 2004
and
M.P.Nos.7697 to 7703 of 2004

M/s.Ramani Textile Mills (P) Ltd.,
No.37 College Road,
Fifth Cross, Odakkadu,
Tirupur-641 002. .... Petitioner
in all Wps.

vs

1. The Commercial Tax Officer,
North Assessment Circle,
Tirupur.

2. The Assistant Commissioner (CT),
Tirupur.

3. M/s.State Industries Promotion
Corporation of Tamil Nadu Ltd., (SIPCOT),
19A Rukmani Lakshmipathy Road,
Chennai - 600 008.

4. The Branch Manager,
ICICI Bank,
Tirupur.

..... Respondents

in all Wps.

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorarified Mandamus to call for the records of the first respondent in TNGST.2302490/1999-2000, 2302490/2000-2001 and 23024901/2002-2003 and quash the recovery proceedings dated 27.10.2003 respectively and further direct the third respondent to delete the inapplicable clause 5:3 of the Eligibility Certificate dated 25.09.2000 issued for the expansion unit of the petitioner in E.C.No.221/V/D/E.

For petitioner in all W.P.s :Ms.Hema Murali Krishnan

For R1 and R2 in all W.P.s :Mr.K.Venkatesh Government Advocate

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorari to call for the records on the file of the first respondent in TNGST.2302490/1999-2000, 2302490/2000-2001 and 23024901/ 2002-2003 and quash the recovery proceedings dated 27.10.2003 and further direct the third respondent to delete the inapplicable clause 5:3 of the Eligibility certificate dated 25.09.2000 issued for the expansion unit of the petitioner in E.C.No.221/V/D/E.

2. Ms.Hema Murali Krishnan, learned counsel appearing for the petitioner submitted that the Original Unit was entitled for deferral benefit upto 01.07.1996 and the expansion unit upto 30.06.2005 and the question of payment of taxes upto the base volume of sales for the expansion unit would arise only during the Assessment Years 1996-97 to 2001-2002, when there is no deferral facility for the existing unit. That apart, it is submitted that without affording an opportunity to the petitioner to put forth their case, the first respondent erroneously resorted to recovery proceedings, without issuing a show cause notice.

3. On a reading of the impugned recovery proceedings dated 27.10.2003, it is clear that even without affording an opportunity to the petitioner, the first respondent had requested the petitioner to pay the tax due within three days from the date of receipt of copy of the notice along with penal interest under Section 24(3) of the Tamil Nadu General Sales Tax Act 1959.

4. The learned Counsel for the petitioner further submitted that the petitioner had already paid the entire tax liability by availing the deferment of sales tax, which was sanctioned by the Assistant Commissioner (CT), Tiruppur.

5. Mr.K.Venkatesh, learned Government Advocate, appearing for the respondents 1 and 2 submitted that since the petitioner was not given an opportunity to put forth their case, the impugned orders, passed by the first respondent on 27.10.2003, can be set aside and in the event of any tax or interest, payable by the petitioner, the first respondent may be given

liberty to issue fresh notice and pass orders in accordance with law.

6. In these circumstances, since the petitioner was not given an opportunity prior to the passing of recovery proceedings dated 27.10.2003, the proceedings of the first respondent dated 27.10.2003 are liable to be set aside and accordingly, they are set aside. In case of any tax or interest, payable by the petitioner, the first respondent is at liberty to issue fresh notice to the petitioner and the petitioner can give his explanation for the notice and after hearing the petitioner's submissions, the first respondent is at liberty to pass orders afresh.

7. With these observations, all the writ petitions are allowed. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. The Commercial Tax Officer,
   North Assessment Circle,
   Tirupur.

2. The Assistant Commissioner (CT),
   Tirupur.

+ 1 cc to M/s.B.Raveendran, Advocate,SR.58210

+ 1 cc to The Govt.Pleader, SR.58147

W.P.Nos.6490 to 6492
of 2004

GMI(CO)
NR 27/09/2017