IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.29603 of 2017 & W.M.P.No.31890 of 2017

M/s.Fabsmith India Pvt. Ltd.,
Rep.by its Director Mr.G.Prabhakar ...Petitioner

.Vs.

1. The Government of Tamil Nadu
   Rep. By its Secretary,
   Commercial Tax Department,
   Fort ST.George, Chennai-9.

2. The Commercial Tax Officer,
   Saligramam, Assessment Circle,
   No.21, G.O.Industrial Estte Main Road,
   Alapakkam, Chennai - 116.

3. M/s GOL Offshore Ltd.,
   Rep. By its Managing Director. ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the Notice RC/102/A3 dated 06.11.2017 issued by the second respondent to the petitioner, quash the same and consequently direct the second respondent not to insist payment of a sum of Rs.10,28,171/- equivalent to C Form which was not submitted by the petitioner, till the 3rd respondent submit C form to the petitioner and pass orders.

For Petitioner : Mr.K.Venkatesan
For Respondents : Mr. K.Venkatesh GA
for Respondents 1 & 2

O R D E R

Heard Mr.K.Venkatesan learned counsel for the petitioner and Mr. K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents. By consent on either side, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved by a communication dated 06.11.2017 sent by the second respondent to their banker proposing to recover a sum of Rs.10,28,171/- being the tax payable by the petitioner including interest for and on account of non production of Form-C declaration in respect of the transactions, the petitioner has done with the third respondent.

3. It appears that there is a dispute between the petitioner and the third respondent in respect of payment of money/issuance of C Forms and that the petitioner filed a civil suit in O.S.No.1250 of 2017 on the file of the City Civil Court, Chennai wherein the third respondent is a sole defendant. It also appears that the suit is in the final stage of arguments. While so, the petitioner, in order to meet the tax liability, which was demanded by the second respondent, issued two cheques dated 21.10.2016 for Rs.5,00,000/- and for Rs.5,28,171/-, in all Rs.10,28,171/-. Both the cheques have been dishonored on account of insufficient of funds and the second respondent had issued notice dated 21.12.2016 threating action under Section 420 of the Indian Penal Code. However, almost after one year, the impugned notice has been issued for recovery of the tax liability payable by the petitioner, as they failed to produce C Declaration Forms.

4.The petitioner's case is that the third respondent has been set exparte in the civil proceedings and they are likely to obtain a decree at the earliest. Therefore, it is prayed that the second respondent may not initiate any action by way of attachment of the bank account. The learned counsel for the petitioner has placed reliance on the order of the Hon'ble Division Bench of this Court in the case wherein the Hon'ble Division Bench followed the decision of the Hon'ble Full Bench M/s. Chemplast Sanmar Ltd., (Lsi) Karaikkal Vs. AAC(CT), Union Territory of Puducherry, Puducherry by order dated 16.08.2017 in TC(R) No.29 of 2017 of this Court in State of Tamil Nadu Vs Arul Murugan [reported in 51 STC 381], the decision of the Hon'ble Division Bench of this Court in case of Vista Security Technics Pvt. Ltd. Vs State of Puducherry [TC(R) Nos.51 to 57 of 2015) and M/s.K.S.B.Pumps Ltd. Vs State of Tamil Nadu [TC(R) No.87 of 2015 dated 30.09.2015) and held that the Tribunal was not right in non suiting the petitioner therein on the short ground that they ought to have produced the C Forms before the Assessing Officer within five years as per the circular of the Commissioner. Thus, the question, which was framed for consideration by the Hon'ble Division Bench was answered in favour of the assessee by holding that even at the appellate stage, Form-C declaration can be accepted.

5.The learned Government Pleader would submit that the petitioner having been granted time for production of C Form declarations, that the cheques were dishonoured for insufficient funds and that the second respondent was justified in issuing the impugned notice.

6.After hearing the learned counsel appearing for both the parties, perusing the materials placed on record and taking note of the decision of the case of M/s. Chemplast Sanmar Ltd., (Lsi) Karaikkal, this Court is of the view that reasonable time can be granted to the petitioner for production of the Form-C declarations, especially when they have already taken action for recovery of the money from the third respondent by filing the civil suit. However, the interest of refund also has to be safeguarded in the mean time.

7. Thus, the impugned communication shall be kept in abeyance for a period of three months from the date of receipt of a copy of this order subject to a condition that the petitioner pays a sum of Rs.4,00,000/- (Rupees four lakhs only) to the second respondent within a period of four weeks from the date of receipt of a copy of this order and simultaneously furnishes a bond for the remaining amount agreeing to repay the remaining amount in the event they are unable to produce the C Form Declarations within three months.

With these observations and directions, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

smn
To,
1. The Government of Tamil Nadu
Commercial Tax Department,
Fort ST.George, Chennai-9.

2. The Commercial Tax Officer,
Saligramam, Assessment Circle,
No.21, G.O.Industrial Estte Main Road,
Alapakkam, Chennai - 116.

+1 CC to Mr.K. Venkatesan, Advocate sr 81989.
+1 CC to Spl. Govt. Pleader sr 82257

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SP(08/12/2017)