IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2017
CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.19411 of 2010 and
M.P.No.1 of 2010

M/s.Sun Gas Pvt. Ltd.,
Saravanapuram Melpathy Road,
Melpathy Village,
Nellikuppam - 607 105,
Cuddalore. ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Cuddalore Taluk, Cuddalore.

2.The Principal Secretary &
Commissioner of Commercial Taxes,
Ezhilagagm Complex,
Chennai - 600 003.

3.The General Manager,
District Industries Centre,
Cuddalore. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ Certiorari to call for the records of the first respondent herein in TNGST No.4401340/2001-02 & 2002-03 - CST NO.382591/2000-01, 2001-02 & 2002-03 quash the impugned proceedings dated 12.07.2010 issued therein.

For Petitioner : Mr.B.Raveendran
For RR 1 and 2 : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)
For 3rd Respondent : Mr.R.Rajeswaran
Special Government Pleader

ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioner; Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondents 1 and 2 and Mr.R.Rajeswaran, learned Special Government Pleader for the 3rd respondent.

2.The petitioner has impugned an order passed by the 1st respondent demanding payment of interest on the cancellation of the deferral agreement entered into the petitioner with the 3rd respondent.

3.It may not be necessary for this Court to make an elaborate exercise to test the correctness of the impugned order, as the following facts alone would be relevant for disposal of the writ petition and to determine as to what relief the petitioner is entitled to.

4.The petitioner availed deferral to an extent of Rs.28.67 lakhs and on account of the violation of the conditions of the agreement, the same was cancelled by the 1st respondent vide proceedings dated 24.01.2007. While it may be true that the petitioner had stopped production in July 2003 itself, but, effected a part payment of sales tax towards sales tax dues being a sum of Rs.15,00,000/- on 29.12.2006 ahead of the date of cancellation of the agreement (24.01.2007). Subsequently, the petitioner cleared the remaining balance of Rs.13,57,524/- on 13.04.2007. Both the aforesaid payments were well within the original period of deferral as per the agreement dated 27.04.2000 which is upto 22.09.2008 (if it was not cancelled). The 1st respondent issued a demand for payment of interest under Section 24(3) for the entire period. This was objected by the petitioner before the 1st respondent by filing an objection to the notice dated 24.10.2008. Subsequently, another revised notice was issued on 15.02.2010. This was challenged by the petitioner in W.P.No.8265 of 2010 and the Court recorded the submission on behalf of the respondents that the petitioner's objection would be considered and disposed of the writ petition, by order dated 07.06.2010, by directing the petitioner to file objection with a direction to consider the same. As per the directions, the objections were filed on 16.06.2010, after which, the impugned order has been passed.

5.The petitioner's case rests solely upon the decision of the Tamil Nadu Taxation Special Tribunal, Chennai in O.P.No.232 of 2002. More or less an identical issue arose for consideration before the Tribunal with regard to the period during which interest is payable under Section 24(3) of the Act in cases of violation of deferral agreement. The Larger Bench of the Special Tribunal held that the dealer was liable to pay interest from the date of cancellation of the agreement till the date he paid the entire amount. The petitioner placed reliance on the said decision before the 1st respondent. The 1st respondent has refused to follow the decision on the ground that in the case before the Special Tribunal, the Commissioner permitted payment of the sale tax dues in instalments which is not the case in respect of the petitioner.

6.In my considered view, the observation made by the 1st respondent is incorrect as the 1st respondent should have taken note of the legal principle laid down by the Tribunal which order has become final as the Revenue has not challenged the order by filing a further appeal before the Division Bench of this Court. As pointed out earlier, the first payment of Rs.15,00,000/- has been paid well before the cancellation of the agreement and the second instalment has been paid on 13.04.2007 well before the pre-emptive date viz., 22.09.2008, had the deferral agreement been in force. Thus, the petitioner is also entitled to the benefit of the ratio laid down by the Tamil Nadu Special Tribunal in the aforementioned case and the interest payable by the petitioner shall be only from the date of cancellation of the agreement viz., 24.01.2007 till the date of payment viz., 13.04.2007.

7.In the light of the above reasoning, the impugned order is set aside and the matter is remanded to the 1st respondent to levy interest for the period from 24.01.2007 to 13.04.2007 and issue a demand for the said amount which shall be settled by the petitioner within a period of 15 days from the date of receipt of the demand.

8.With the above observation, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl
To

1.The Assistant Commissioner (CT),
Cuddalore Taluk, Cuddalore.

2.The Principal Secretary &
Commissioner of Commercial Taxes,
Ezhilagagm Complex,
Chennai - 600 003.

3.The General Manager,
   District Industries Centre,
   Cuddalore.

+1 cc to Mr.B.Raveendran Advocate sr 83334
+1 cc to Mr.Special Govt Pleader sr 83323

W.P.No.19411 of 2010

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