IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A.No.1108 of 2017

The Tamil Nadu Industrial Investment
Corporation Limited,
SIDCO Project Buildings,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 600 032
and present Address
Door No.27, I Floor,
Rajaji Road, Tambaram West,
Chennai - 600 045. ...Appellant

Vs.

1.M/s.Virgo Polymer India Limited,
A-1 A, MMDA Industrial Complex,
Maraimalai Nagar,
Kancheepuram District.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Deputy Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai - 600 028. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 24.07.2017 made in W.P.No.12576 of 2005.

For Appellant : Mr.K.Magesh

For Respondents : Mr.Kuberan for
M/s.Rank Associates for R1

JUDGMENT

(Order of the Court was made by Rajiv Shakdher, J.)

1. Issue Notice.

1.1. Mr.Kuberan, learned counsel, accepts notice on behalf of Respondent No.1 He says that, he does not wish to file a counter affidavit and that, he will rely upon the record already available with the Court.

2. Accordingly, with the consent of the learned counsels for the parties, the writ appeal is taken up for hearing and final disposal.

3. The captioned appeal, lays a challenge to the judgment, dated 24.07.2017, passed by the learned single Judge. The prayer made in the writ petition, is to the effect that, a mandamus, be issued to the appellant, to return the title documents, deposited with it, as Collateral Security, for the loan availed of by the Respondent No.1, albeit, without

insistence on payment of sales tax or any other such levy.

4. The defence of the appellant before the learned single Judge, revolved around, Clauses 8 and 33 of the Hire Purchase Agreement. According to the appellant, Respondent No.1/Hirer, was liable to pay sales tax and any other taxes, levies or dues, that may become payable under the extant law at the time of transfer of ownership in the machinery and equipment given on hire by the appellant to Respondent No.1. This is, broadly, what is stated in Clause 8 of the Hire Purchase Agreement.

4.1. Insofar as Clause 33 is concerned, it provides that Hirer/Respondent No.1 would be liable to pay to the appellant, sales tax and other taxes, levies and other dues in respect of the machinery and equipment, even after ownership qua the same is transferred to the hirer. In case of failure to make the payment, the owner i.e., the appellant, would proceed against the hirer, i.e., Respondent No.1, for enforcing payment, by adopting lawful means.

5. On the other hand, Respondent No.1 had contended that the total hire rent was pegged at Rs.148.50 lakhs (Rupees One Crore forty eight lakhs fifty thousand only), which was payable via., sixty (60) Equated Monthly Instalments (EMIs) of Rs.2,47,500/- each, factored in

the sales tax component.

6. The learned single Judge, having regard to the contrarian stands, taken before him, zeroed down on what was not disputed before him, which is, that the appellant had paid a sum of Rs.13,13,075/- towards sales tax.

6.1 Having noticed this aspect of the matter, the learned single Judge also observed that, what is at issue between the parties before him was, whether the Respondent No.1 was required to reimburse the sum of Rs.13,13,075/- along with interest to the appellant herein.

6.2. The other aspect, which, according to the learned Single Judge, emerged upon hearing the parties was, as to the rate at which sales tax was payable on machines, that is, at the rate of 4% or 8%.

7. Having regard to these submissions, the learned single Judge disposed of the writ petition, with a direction, that Respondent No.1 would furnish a bank guarantee, in the sum of Rs.17,00,000/- (Rupees Seventeen lakhs only) in favour of the appellant. The needful had to be done within a fortnight from the date of receipt of a copy of the order.

7.1 Furthermore, upon receipt of bank guarantee of a reputed bank, the appellant was required to cancel the charge, if any, and release the original title deeds and all other attendant documents pertaining to the subject property. Once again, the needful was to be done within a fortnight.

7.2. In addition, leave was given to Respondent No.1 to make a representation to the appellant on the two aspects noted by the learned single Judge in his order, to which, we had made a reference above. The appellant was to attempt a reconciliation and resolution of the issues at hand, failing which, the appellant has mandated to give its decision in the matter.

7.3. The learned single Judge, made it abundantly clear that if the decision was adverse to the interest of the Respondent No.1, he would be at liberty to assail the order, which the appellant may pass on his representation.

8. Before us, Mr.K.Magesh, who appears for the appellant, says that the liability towards sales tax, which has been borne by the appellant, is much larger. According to the learned counsel, as on 31.07.2017, the liability accrued in that behalf is a sum of Rs.1,37,38,808/-. The learned counsel, says, that this amount would include the sum of Rs.13,13,075/- and that, if interest, at the rate of 16.5% is added for the period spanning between 01.04.2001 and 31.07.2017, it would add up to the figure, indicated above.

9. Mr.Kuberan, learned counsel, who appears on behalf of the the

contesting respondent i.e., respondent No.1, says, that a perusal of Paragraphs 18 and 19 of the impugned judgment, would show that it proceeded on a consent given by the appellant, with regard to the amount, for which, bank guarantee was required to be furnished by Respondent No.1. It is further submitted by the learned counsel, that no ground, whatsoever, has been taken in the appeal impugning this aspect of the matter.

10. On the other hand, Mr.Magesh, in rejoinder, says that the appellant did not give its consent to return of the title documents with respect to the subject property, upon bank guarantee been furnished in the sum of Rs.17,00,000/-. In other words, Mr.Magesh, says that, if bank guarantee is furnished, which would cover the interest component as well, the appellant would have no difficulty in releasing the title documents.

11. Mr.Kuberan, informs us that the bank guarantee, in the sum of Rs.17,00,000/-, as directed by the learned single Judge, has already been furnished to the appellant.

12. According to us, the submissions advanced by Mr.Magesh, in effect, seem to project that the record of the Court is not accurate. A plain reading of paragraph 18 of the impugned judgment, to our minds,

would, show that the appellant had apparently, via his counsel given its consent to the learned single Judge that it would stand "protected", if a bank guarantee, in the sum indicated in Paragraph 19 was furnished to it.

12.1. The relevant part of paragraphs 18 and 19 are extracted hereafter:

> *"18. **The first respondent / TIIC would submit that if this sum of sales tax paid by them is protected by way of a bank guarantee, they are willing to release the title deeds for the collateral security properties, with a rider that the bank guarantee can either be invoked or returned subject to a decision being taken on the writ petitioner approaching them on the aforesaid two aspects touching upon the lone issue being sales tax payable on said machineries.***
>
> *19.Therefore, the following order is passed:*
>
> *a) The writ petitioner shall furnish a bank guarantee from a reputed bank favouring TIIC (making TIIC the beneficiary) for a sum of Rs.17,00,000/- (Rupees seventeen lakhs only), within a fortnight from the date of receipt of a*

copy of this order;

b) On such bank guarantee being produced, as aforesaid by the writ petitioner, the first respondent / TIIC shall cancel the charge, if any and release the original title deeds and all other attendant documents pertaining to collateral security properties being two industrial sheds at SIDCO Industrial Estate, Maraimalainagar, bearing No.B37, land admeasuring an extent of 22 cents or thereabouts with 3000 sq. ft. of superstructure in the form of shed and No.B48, land admeasuring an extent of 42 cents or thereabouts with 9000 sq.ft. of superstructure in the form of shed, to the writ petitioner within a fortnight therefrom;

c) After furnishing the bank guarantee as aforesaid, the writ petitioner shall submit a representation to the first respondent/TIIC raising the two pivotal aspects pertaining to the lone issue of sales tax payable on said machineries;

d) The first respondent / TIIC shall make every effort to reconcile / resolve the issue and respond suitably in writing to the same within six (6) weeks therefrom;

e) Though obvious, it is made clear that all questions pertaining to sales tax payable on said machineries are left open for being decided without being swayed by the contents of this order.

f) It is made clear that if the ultimate decision of TIIC regarding the sales tax payable on said machineries is adverse to the writ petitioner, either in full or in part, this order will not preclude the writ petitioner from assailing the same in a manner known to law." (emphasis is ours)

13. It is trite to state that, as to what transpired before the Court in the proceedings held before it can, if at all, be conclusively reflected only in the judgement of the Court, which cannot be contradicted by any assertions made by a party in an affidavit or by any other evidence. In case a party is of the view that the proceedings of the Court have been incorrectly recorded in the judgement, it is incumbent upon such party to move the concerned Court for rectification, while the matter is still fresh in the mind of the Judge, who passed the order. There is no other way known to law to correct the record of the Court. {*See* ***Ram Bali Vs. State of Uttar Pradesh, 2004 SCC (Crl) 2045, State of Maharashtra Vs. Ramdas Shrinivas Nayak and Anr (1982 (2) SCC 463), Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. And Ors. (2003 (2) SCC 111), and Roop Kumar Vs. Mohan Thedani (2003 (6) SCC 595***)}.

14. Therefore, having regard to the submissions of Mr.Magesh, in

our view, the only remedy available to the appellant is to approach the learned single Judge, by way of an appropriate application to correct the record. Thus, if the appellant is so advised, it may approach the learned Single Judge in that behalf, albeit, in accordance with law.

15. Accordingly, the writ appeal is disposed of in the aforementioned terms. There shall, however, be no order as to costs.

(R.S.A., J.) (A.Q., J.)

11.09.2017

svki

To

1.The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai - 600 028.

RAJIV SHAKDHER, J.

and

ABDUL QUDDHOSE, J.

(svki)

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