IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.15158 & 15159 of 2004

M/s. Sisilex Stampings,
Rep., by its Power of Attorney,
Holder V.Sudarsena Rao
SP-56, III Main Road,
Ambattur Industrial Estate,
Chennai - 600 058. ...Petitioner in both W.Ps.,

Vs.

1. The Commercial Tax Officer,
Ambattur Assessment Circle,
Chennai - 600 049. ... 1st respondent in both W.Ps.,

2. The Assistant Commissioner (CT),
Zone X, Chennai 600 006.

3. The Tamil Nadu Industrial Investment
Corporation Ltd.,
Ambattur Branch,
Chennai - 600 058. ...2nd & 3rd Respondents in
W.P.No.15158 of 2004

2. The Deputy Commissioner of Commercial Taxes,
Chennai (South Division), PAPJM,
Buildings, II Floor,
Greams Road, Chennai - 600 006.

3. The Joint Commissioner of Commercial Taxes
(Revision Petition),
Ezhilagam,
Chepauk, Chennai - 600005. ...2nd & 3rd Respondents in
W.P.No.15159 of 2004

Prayer in W.P.No.15158 of 2004: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondents to permit the petitioner to avail the benefit of IFST deferral Scheme granted by virtue of the eligibility certificate dated 11.07.1996 issued by the third respondent herein and accorded by the second respondent herein in his proceedings in RC.8526/96-A3 dated 05.06.1998.

Prayer in W.P.No.15159 of 2004: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the third respondent herein relating to R.P.No.JJ1-208/2003 on his files and to quash the impugned proceedings, dated 08.03.2004, made therein confirming the levy of penal interest of Rs.1,04,241/- levied by the first respondent herein under Section 24(3) of the TNGST Act, 1959.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.K.Venkatesh,
Government Advocate.

COMMON ORDER

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.K.Venkatesh learned counsel appearing for the respondents. With the consent on either side, the Writ Petitions themselves are taken up for final disposal.

2. The short issue, which falls for consideration is whether the order passed by the Joint Commissioner of Commercial Taxes, the Revisional Authority was justified in confirming the order passed by the Deputy Commissioner, Commercial Taxes, who in turn confirmed the demand raised on the petitioner for non fulfillment of the conditions of the IFST Deferral Scheme.

3.It is an admitted case that the petitioner did not report any taxable turnover for the relevant assessment year namely for 2000-2001. Taking this into consideration, the Assessing Officer issued a show cause notice dated 23.05.2001, pointing out that the petitioner has not been doing any manufacturing activities and as per the eligibility certificate, if the terms and conditions are violated, the certificate has to be cancelled and therefore, demanded the arrears of tax along with penal interest at 2%. This was followed by another notice, dated 20.02.2002.

4. The petitioner submitted their objections stating that due to recession continuously 12 months, they could not even get a single order from any of the customers and therefore the Commercial Taxes, Ambattur directed them to pay the total amount availed as IFST loan, which was paid stating that production for a continuous period for 12 months was 'NIL'. Further, it was stated that February 2002 onwards, they had secured orders and started availing the IFST facility. Not being satisfied with the explanation offered, the demand was confirmed, as against which, the petitioner filed a revision before the Deputy Commissioner. The Deputy Commissioner after carefully going through the entire

materials was of the clear view that the petitioner has not furnished any proof to show that there was manufacturing activities for a continuous period of six months. Further, the petitioner has not reported any taxable turnover for the Year 2000-2001, and there was no corroborative evidence produced by them to substantiate their contentions that they had produced goods for labour work. This order was put to challenge by the petitioner by way of Revision Petition before the Joint Commissioner. The Joint Commissioner after carefully going through the entire materials affirmed the order passed by the Deputy Commissioner.

5. Thus, the fact remains that the petitioner miserably failed to produce any records to show that he had not stopped normal production for more than six months continuously. Thus, in the absence of the records, the respondents authorities was fully justified in confirming the demand and rejecting the stand taken by the petitioner. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot act as an appellate authority over the factual findings recorded by the two authorities namely, the Deputy Commissioner Commercial Taxes and the Joint Commissioner, Commercial Taxes.

For all the above reasons, the petitioner has not made out any case for interference and accordingly, the Writ Petitions fail and they are dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn/sm

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+1cc to Mr.Chandran Karuppiah, Advocate, S.R.No.47972
+1cc to Special Government Pleader, S.R.No.48268

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SKV(CO)
CS/11/08/17