IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGANANAM

W.P.No.18350 of 2004
and W.P.M.P.No.21855 of 2004

M/s.Pullicar Mills Ltd.,
107, Sankari Road,
Tiruchengode - 637 211.
Salem. .. Petitioner

Vs.

1. The Secretary,
Handlooms, Handicrafts, Textiles
and Kadhi (C2) Department,
Chennai.

2. Principal Secretary to the Govt.,
Commercial Taxes and Religious
Endowments Department,
Chennai.

3. The Deputy Commercial Tax Officer,
Tiruchengode Town Asst. Circle,
Tiruchengode. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuing a Writ of Certiorarified Mandamus, to call for the records of the first respondent and quash the impugned order dated 08.04.2003 in No.15847/C2/00 and consequently direct the first respondent to grant deferral scheme for a further period from 16.12.1999 to 15.12.2001.

For Petitioner : Mr.Venkatanarayanan
for Mr.Subbaraya Aiyar Padmanabhan

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

ORDER

Heard Mr.Venkatanarayanan, learned counsel for Mr.Subbaraya Aiyar Padmanabhan, learned counsel for the petitioner and

WEB COPY

Mr.K.Venkadesh, learned Government Advocate appearing for the respondents.

2. The petitioner is a Textile Mill and was declared as a Sick Industrial Unit and a reference was made by the Board for Industrial and Financial Reconstructions (Branch-II) (herein after called as "BIFR") in case No.57/1994 for preparing a draft scheme for rehabilitation. Among other things, the dues to the Commercial Tax Department was also one of the matters to be considered. The Government vide letter dated 19.05.1995 addressed to the Registrar, BIFR, informed that the Government will sanction the deferral of sales tax for a period not exceeding five years to the petitioner with a condition that the amount so deferred shall not exceed the fixed assets of the company, if the said concession is included in the scheme to be sanctioned by the BIFR. Pursuant to the said communication, a scheme was approved and in the Scheme in clause 7.3, it is stated that "to consider deferment of sales tax arrears for 5 years as applicable to sick units as per its approved package". The Government passed an order in G.O.Ms.No.213, Hand looms Handicrafts, Textiles and Khadi (C2) Department. However, granted deferral only for three years with the contition stating that extension of grant of deferral for a further period of two years will be considered later, after watching the performance of the mills.

3. The petitioner submitted representations on 12.03.1997 and 08.03.1999 requesting for extension of the deferral for a further period of two years and reporting about the compliance. In the meantime, since orders were not forthcoming from the Government, the Sales Tax Department insisted the petitioner to pay sales tax. The petitioner, therefore, approached this Court and filed W.P.No.13560 of 2000, which was disposed of by an order dated 10.08.2000 with a direction to consider the petitioner's representations dated 08.03.1999 and 18.07.2000 within a time frame, pursuant to which, the Government, by G.O.Ms.No.(D) 53, dated 02.12.2000, rejected the petitioner's request for extension of the deferral scheme on the ground that the petitioner has not fulfilled three conditions as mentioned in the said Government order. Thereafter, the petitioner submitted a representation on 07.12.2000 to the first respondent contending that the allegations made in the Government Order alleging non-fulfillment of three conditions is incorrect and they placed certain factual informations in support of their claim. Pursuant thereto, the first respondent Department, by letter dated 26.12.2000, called upon the petitioner to show the proof for remittance of sale tax arrears, document showing the book value of assets of the mills and a copy of the mills' order forming sub-committee to be headed by the nominee of Director of Hand looms and Textiles. Pursuant to this, the petitioner sent

WEB COPY

their response on 07.12.2001 stating that as against the sales tax deferral facility, they reiterated that they are entitled for deferral for a period of five years and that they have complied with the queries pointed out by the Government in their letter dated 26.12.2000, vide their reply dated 12.01.2001.

4. Without reference to such a stand, the first respondent by order dated 08.04.2003 passed the impugned order stating that the petitioner is not entitled for any indulgence, as they are not in the habit of obeying the Government Orders and Court orders. Even thereafter, the petitioner sent a representation dated 28.04.2003 followed by reminders dated 03.10.2003 and 28.01.2004. Since the said representations have not been considered, the petitioner is before this Court seeking for a direction to set aside the order dated 08.04.2003 and to direct the first respondent to grant deferral scheme for a period of five years.

5. The counter affidavit filed by the respondents also reiterate the stand taken by the respondents in the order passed by them and pointing out that the petitioner has not fulfilled the terms and conditions imposed on them. If such is the case, nothing prevented the first respondent or the Officers empowered by him to afford an opportunity to the petitioner to substantiate that they have complied with the conditions. This is more so, because in the scheme framed by the BIFR, to which the States Government was a party, there was a direction to consider the deferment of the sale tax arrears for five years. Therefore, this is a fit case where the Government should reconsider the stand taken by them in the earlier proceedings.

6. Accordingly, this writ petition is disposed of by directing the first respondent to consider the petitioner's representations dated 28.04.2003, 03.10.2003 and 28.01.2004, after affording an opportunity of personal hearing to the authorised representative of the petitioner and pass a speaking order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

https://hcservices.ecourts.gov.in/hcservices/

vsm

1. The Secretary,
   Handlooms, Handicrafts, Textiles
   and Kadhi (C2) Department,
   Chennai.

2. Principal Secretary to the Govt.,
   Commercial Taxes and Religious
   Endowments Department,
   Chennai.

3. The Deputy Commercial Tax Officer,
   Tiruchengode Town Asst. Circle,
   Tiruchengode.

+1cc to Mr.Subbaraya, Advocate sr. 48524
+1cc to Special Government Pleader, Sr. 48303

W.P.No.18350 of 2004

SR(CO)
VR)03/08/2017)

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/