IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.19222 of 2004

M/s. Gem Cooling Towers Pvt. Ltd.,
rep. by its Director K.P.Manoharan,
88, Sivananda Colony,
Coimbatore-18 ...Petitioner

Vs.

1. The Tamil Nadu Industrial Investment Corporation Limited,
   Coimbatore East Branch,
   Coimbatore-18.

2. The Assistant Commissioner (CT) (FAC) Zone III Coimbatore,
   Commercial Taxes Buildings,
   Coimbatore 18.

3. The Commercial Tax Officer,
   Gandhipuram Assessment Circle,
   Commercial Taxes Buildings,
   Coimbatore-18. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the second respondent in his proceedings in Ref: 1451/2003/A2, dated 04.06.2004 and quash the same as illegal and to issue any further direction or order.

For Petitioner : Mr.S. Ramanathan

For Respondents 2 & 3 : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S. Ramanathan, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondents 2 and 3.

2. The petitioner is a registered dealer on the file of the third respondent, under the provisions of both Tamil Nadu General Sales Tax, 1959 (TNGST Act) and Central Sales Act, 1956 (CST Act). They are engaged in the business of manufacturing Cooling Towers, PVC Fills Sprinklers and Fans.

3. The order, impugned in this Writ Petition is an order passed by the second respondent, cancelling the agreement entered into between the petitioner and the Department, to avail interest free sales tax benefit (henceforth, referred to as IFST benefit). In terms of the said contract, cancellation of the agreement can be done in case of default of any of the conditions mentioned in para Nos.3 to 7. Admittedly, para Nos.4 to 7 of the agreement are not attracted to the facts of the present case. It has to be seen, as to whether the second respondent has passed the impugned proceedings, for the default committed by the petitioner, as contained in para No.3 of the agreement. Unfortunately, in the notice, dated 26.02.2004, the second respondent has not specifically stated, as to which of the conditions of the agreement, the petitioner has violated. This is sufficient to hold that the proceedings are not sustainable in law. Even assuming that the second respondent has proceeded to issue the notice, dated 26.02.2004, by referring to para No.3 of the agreement, it has to be seen as to whether para No.3 would stand attracted, for cancellation of the contract. Para No.3 of the agreement states that the petitioner agrees to repay the Government loan in installments, the first year's loan in the 2006 year August 2006 for month August 1997 along with tax payable for the corresponding months of (on or before 20 of the month) that year, the second year's loan in the 2007 year August months for month August 1998 along with tax payable for the corresponding months of that year and so on, as per G.O.P.No.92, Commercial Taxes and Religious Endowments Department, dated 22.02.1991, read with G.O.Ms.No.48 Commercial Taxes and Religious Endowments Department, dated 11.02.1994. In case of default, in payment of Government's loan, the petitioner undertakes to repay the same and the same could be recovered by proceeding against the movable and immovable properties of the petitioner.

4. Admittedly, there is no allegation that the petitioner has defaulted in payment of the loan availed from the Government, but the allegation was that, it was because of wrong availment of the benefit, notice was issued. On receipt of the notice, the petitioner had paid the entire tax. Subsequently, a notice was issued on 12.09.2002, stating that the petitioner has wrongly availed the IFST benefit, and therefore, they have to pay interest under Section 24 (3) of CST Act, and accordingly, demand for a sum of Rs.2,49,576/- was raised, and this amount has also been paid by the petitioner. While it is the case of

the second respondent that IFST benefit has been wrongly availed by the petitioner, and there was no default in payment of the loan to the Government, after about two years, notice was issued on 26.02.2004, stating that there is violation of the agreement. As pointed out earlier, the impugned notice does not specifically refer as to which conditions of the agreement, the petitioner has violated. Thus, the entire proceedings are not sustainable. If the impugned proceeding is allowed to remain, it will amount to double jeopardy, as already the petitioner has paid the tax for the first loan availment as well as the penal interest imposed under Section 23 (3) of the CST Act. Thus, for the very same reason, the petitioner cannot be inflicted with another demand. Further, it is brought to the notice of this Court that the benefit of the deferral scheme was given to the petitioner, for a period from 1997- 2006 and the petitioner has paid the entire loan.

5. For the above reasons, the impugned order has to be held to be not sustainable in law. Accordingly, the Writ Petition is allowed and the impugned is set aside. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Tamil Nadu Industrial Investment
Corporation Limited,
Coimbatore East Branch,
Coimbatore-18.

2. The Assistant Commissioner (CT) (FAC)
Zone III Coimbatore,
Commercial Taxes Buildings,
Coimbatore 18.

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Coimbatore-18.

+1cc to M/s.S.Ramanathan,Advocate sr.48721
+1cc to Government Pleader sr.48687

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rr(co)
ss(4/9/2017)