IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2017

Coram

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

Writ Petition No.19801 of 2004
and
W.P.M.P.No.23808 of 2004

Auromandal Papers and Boards,
rep. by its Erstwhile Managing Director,
R.Palaniswamy. ...Petitioner

Vs.

1. The General Manager,
District Industries Centre,
Madurai.

2. The Assistant Commissioner (CT)
Dindigul.

3. The Commercial Tax Officer -V,
Dindigul.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the order passed by the third respondent in his notice no.ROC/3465/04/A3, dated 17.05.2004 and to quash the same.

For Petitioner : Mr.Md. Ibrahim Ali

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Md. Ibrahim Ali, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondents.

2. The petitioner is a Company, and the deponent to the affidavit was an ersthwhile Managing Director of the petitioner-

Company. The Company had been granted the benefit of Interest Free Sales Tax Deferral Scheme (IFST Scheme) and they entered into an agreement with the second respondent for a period of six years from 01.04.1992, for which, the eligibility certificate was issued on 12.03.1993. The petitioner-Company was sold to one M.Govindaraj, Son of Manickam Chettiar, and, as per the agreement for sale, the purchaser has to pay the entire dues, and this was specifically agreed to, and, it appears that part of the amount was also paid by the said M.Govindaraj. In the year, 1999, a notice was issued by the respondent/Department to M.Govindaraj and others, vide notice, dated 19.04.1999, demanding arrears of tax for the assessment years 1993-94 to 1995-96.

3. Thus, the Department became aware of the transfer, and though the petitioner did not obtain prior approval from the Department, after effecting sale of the petitioner-Company, the Department became aware of it, and issued demand notice to M.Govindaraj and others, which means that, the Department deemed to have approved the contract entered into between the petitioner and the said M.Govindaraj. Further, after about nearly five years, the impugned notice has been issued, stating that the transfer of the Unit is not permissible, and the petitioner should pay the balance tax. When the Department has recognized the transfer, and issued demand notice to M.Govindaraj and others in the year, 1999, it is deemed that the Department have approved the sale transaction and the Department, therefore, should proceed with against the M.Govindaraj and others, to whom notice, dated 19.04.1999 were issued.

4. For the above reasons, the impugned notice cannot be given effect to against the petitioner. Accordingly, the Writ Petition is allowed, the impugned notice is set aside, with liberty to the Department to proceed against the M.Govindaraj and others, to whom, the notice dated 19.04.1999 were issued. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To
1. The General Manager,
District Industries Centre,
Madurai.

2. The Assistant Commissioner (CT)
   Dindigul.

3. The Commercial Tax Officer -V,
   Dindigul.

+1cc to Mr.M.Md.Ibrahim AG,Advocate sr.48443

+1cc to special Government Pleader sr.49128

Writ Petition No.19801 of 2004

kk(co)
ss(31/7/2017)