BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.02.2017

CORAM:
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN
W.P.(MD)No.2462 of 2015
and M.P.(MD)Nos.1 and 2 of 2015

Senthil Oxygen (P) Ltd.,
Rep.by its Managing Director,
J.Senthil Kumar
... Petitioner

Vs.

The Assistant Commissioner (CT) II,
Thanjavur Assessment Circle,
Sachidanatha Moopanar Road,
Commercial Tax Buildings,
Thanjavur.
... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in connection with the impugned order of demand notice issued in Na.Ka.No.1993/2007/A3, dated 23.01.2015 and the consequential impugned auction notice issued in Na.Ka.No.1993/2007/A.3 dated 06.02.2015 and quash both as illegal.

For Petitioner : Mr.D.Rajagopalan, Senior Counsel for Mr.G.Thalaimutharasu
For Respondent : Mr.Karthikeyan, AGP

O R D E R

The petitioner seeks for a Writ of Certiorari, calling for the records of the impugned order of demand notice in Na.Ka.No.1993/2007/A3, dated 23.01.2015, and the consequential impugned auction notice in Na.Ka.No.1993/2007/A.3 dated 06.02.2015 and quash both the impugned orders as illegal.

2.The petitioner’s property was brought for auction on the ground that he has not paid tax since the deferral agreement executed in favour of the petitioner has been cancelled on account of the default committed by him. Earlier the petitioner has filed a Writ petition in W.P.No.3913 of 2014 before this Court and this Court by order dated 24.09.2014, observed that the petitioner has paid a sum of Rs.27 lakhs and also taking note of the fact that the petitioner has not continued his business and that no production activities have been carried on since 2008, this Court further directed the respondent to consider and pass appropriate orders with regard to waiver of penal interest and if any simple interest is payable, the same alone can be charged and the petitioner may be granted substantial time to pay simple interest.

The relevant paragraph Nos.3 and 4 of the order read as under:

> "3.Even as per the counter, the arrears payable is Rs.30,83,608/-. The petitioner is ready and willing to pay the amount as demanded in the impugned proceedings.
>
> 4.The learned counsel for the petitioner produced before this Court the original Demand Draft totalling a sum of Rs.27,00,000/- and together with the amount already paid, the total amount would become Rs.37,00,000/- which is more than what has been stated in the impugned proceedings. However, the department claimed further interest. In my view, the department should accept the payment and put an end to the matter. Since the petitioner's business has been closed and there is no production activity since 2008 onwards, and the power supply has also been disconnected. This is a good ground for the respondent to consider waiver of interest. Since the entire amount as demanded in the impugned proceedings has been paid, the writ petition is allowed and the impugned order is set aside. Consequently, the connected miscellaneous petitions are closed. No costs. The respondent is directed to accept the payment of Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) to be made by the petitioner along with a copy of this order. On receipt of the same, the respondent shall consider and pass appropriate orders for waiver of any penal interest, and if any simple interest is payable, the same alone can be charged and the petitioner may be granted substantial time to pay the simple interest."

In view of the above, out of the arrears of tax payable, a sum of Rs.37 lakhs has been paid. However, suddenly, the present impugned notice dated 23.01.2015, has been issued to the petitioner stating that the petitioner is liable to pay Rs.40,84,005/- towards arrears of tax apart from interest.

3.Mr.D.Rajagopal, learned Senior Counsel appearing for the petitioner would submit that pursuant to the earlier impugned notice dated 18.02.2014, the above said Writ petition has been filed and the petitioner has paid totally a sum of Rs.37 lakhs. If at all the respondent wants to charge any amount, it is only with regard to simple interest for the period of 7 months i.e., from 18.02.2014 to 24.09.2014. Instead of doing so, demanding more than Rs.40 lakhs is once again reopening the issue, which has already been decided, and hence, the petitioner cannot be penalized.

4.The learned Additional Government Pleader appearing for the respondent submitted that the amount of Rs.36,61,153/- as mentioned in the auction notice dated 18.02.2014, is only with regard to principle amount and the same does not include the arrears of tax amount. The tax amount, apart from the amount already paid by the petitioner, would come to Rs.40 lakhs and hence, the petitioner will have to pay the tax amount due from 2007 onwards.

5.Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

6.From the reading of the impugned order dated 06.02.2015, it is very clear that without considering the order passed by this Court in W.P.(MD)No.3913 of 2014 dated 24.09.2014, the present impugned notice has been issued directing the petitioner to pay arrears of tax apart from interest. This Court has already considered the contention of the petitioner as well as the respondent in paragraph Nos.3 and 4, however, the same has not been referred to in the impugned demand notice dated 23.01.2015.

7.Having heard both the parties and the petitioner having already paid a sum of Rs.37 lakhs during the pendency of Writ petition in W.P.No.3913 of 2014, the respondent will have to give credit to the said amount, while arriving at the simple interest and after affording an opportunity of hearing to the petitioner. Hence, it is open to the respondent to collect the simple interest as directed in the aforesaid Writ petition. Since the impugned notice, demanding the payment of Rs.40,84,005/- is without reference to the order dated 24.09.2014, passed by this Court in W.P.No.3913 of 2014, the impugned order dated 06.02.2015, is set aside and the matter is remitted back to the respondent to consider the issue with regard to payment of simple interest and after hearing the petitioner, an appropriate humanitarian steps shall be taken for the purpose of payment of simple interest and the respondent is directed to send fresh communication to the petitioner within a period of one month from the date of receipt of a copy of this order.

8.With these directions, the Writ petition is disposed of. No costs. Consequently, connected M.Ps.are closed.

Sd/-
Assistant Registrar[CO]

/True copy/

Sub Assistant Registrar

To

The Assistant Commissioner(CT)II,

Thanjavur Assessment Circle,

Sachidanantha Moopanar Road,

Commercial Tax Buildings,

Thanjavur.

+1cc to Mr.G.THALAIMUTHURASU,Advocate,SR.10303

W.P.(MD)No.2462 of 2015
23.02.2016

NBJ

KK-SV-MMS-02.03.2017-4P-3C