BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.(MD) No.15440 of 2013
and
MP(MD) Nos.1 & 2 of 2013

M/s.Sri Mappillai Vinayagar
Roller Flour Mills
Rep. by its Partner K.Balamuruganandam
NO.163 Nethaji Road, Madurai. ... Petitioner

-vs-

The Assistant Commissioner,
Commercial Tax Department
Thirumangalam Assistant Circle
Thirumangalam, Madurai District ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records relating to the impugned order passed by the respondent in his proceedings in Roc 1525/2007/A3 dated 03.09.2013 and the notice for recovery of money due in Form U dated 03.09.2013 and quash the same as illegal and arbitrary.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.Raja Karthikeyan
Addl. Government Pleader

*****

O R D E R

The prayer in the writ petition is for a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in his proceedings in Roc 1525/2007/A3 dated 03.09.2013 and the notice for recovery of money due in Form U dated 03.09.2013 and quash the same as illegal and arbitrary.

2.The case of the petitioner is that the petitioner is a registered Firm under the Indian Partnership Act. The Commercial Tax Officer, West Veli Street, Madurai issued a notice of attachment in Form No.5 dated 29.10.2007 under Revenue Recovery Act on 09.11.2007 and thereby the respondent Department attached the property of the Firm M/s.Sri Mappillai Vinayagar Cine Complex, wherein, the petitioner and others were partners. Thereafter, the said Complex filed W.P.(MD) No.159 of 2008 before this Court challenging the attachment notice dated 29.10.2007, wherein, final order was passed by this Court on 30.01.2008 by holding that the Company being a legal entity by itself can sue or can be sued as a legal entity and any dues from the company has to be recovered only from the company and not from its Directors.

3. Therefore, the tax arrears of the Roller Mill was paid upto the year 2008. By order dated 14.09.2012, the Assistant Commissioner of Commercial Tax, Nethaji Road Assessment Circle, Madurai, had issued a proceeding, whereby it was communicated that the application submitted by the petitioner for waiver of tax for the year 1992-1993, since has been forwarded to the Government for appropriate decision and once such a decision is taken by the Government, the tax due payable by the petitioner can be paid. In spite of the said proceedings issued by the respondent Department on 14.09.2012, wherein, it was mentioned that decision of the Government to be awaited for waiver of the tax due payable by the petitioner, now, suddenly the respondent Department, by impugned proceedings, dated 03.09.2013, had issued a notice to the lessee of the petitioner, and a copy of the impugned notice had been marked to the petitioner also, and therefore, challenging the said order dated 03.09.2013 issued by the respondent, whereby the very same tax due, which was sought to be waived by the Government by the application of the petitioner and the same was, in fact, forwarded by the very same respondent Department in the year 2012 was directed to be paid. Hence, the petitioner has come out with the present writ petition.

4. The learned counsel for the petitioner would submit that the Government issued a scheme for waiver as per G.O.Ms.No.216 dated 11.07.1995, whereby the surcharge, additional surcharge and additional sales tax in respect of the members of the Flour Mill Association of the whole of Tamil Nadu for the period from 17.03.1990 to 31.03.1993 was waived. Based on the said waiver Scheme such flour mills owners had availed the Scheme and got the waiver. However, subsequently, on coming to know the Scheme, the petitioner had also made a request to avail the said waiver scheme only on 16.05.2012. The said application filed by the petitioner was recommended by the respondent Department to the Government and the same is reflected at the proceedings of the respondent dated 14.09.2012, which reads thus:

> "8.It is therefore submitted that since the dealer has now only represented in his letter dated 16.05.2012, to waive the amount of Additional Tax the same will be recommended through the Department for getting sanction from the Government.
>
> 9.Apart from this, for the year 2000-01, the petitioners concerned have balance of Tax and Penalty for Rs.72,063/- and this amount must be paid together with interest of 2% per month after 30 days of the date of order of Assessment and notice was also

recovered to such amount.

10.In these circumstances, the petitioner should remit the amount of tax and penalty of Rs.72,063/- with interest for the time being, and the waiver amount of Rs.15,02,847/- could be made only after the sanction order of the Government, on finding his eligibility conditions after perusal of records and Assessment file concerned."

5. The learned counsel for the petitioner would submit that in view of the said recommendation having been made by the respondent to the Government for taking decision about the request of the petitioner for waiver and the said amount of tax to the extent of more than Rs.15 lakhs was directed not to be paid by the petitioner, immediately, and the same can be paid only after a decision to be taken in this regard by the Government, the respondent cannot now issued the impugned proceedings dated 03.09.2013, whereby the very same amount of more than Rs.15 lakhs including interest was sought to be recovered from the petitioner or directed to be paid by the petitioner through the impugned order without awaiting the decision to be taken by the Government and therefore, the impugned order cannot be sustained.

6. Per contra, the learned Additional Government Pleader would submit that even though the waiver scheme was introduced by the Government through the said Government Order in G.O.Ms.No.216 dated 11.07.1995 to a number of flour Mills owners, who are members of the Association, the same was not availed or utilised by the petitioner. Though the said scheme was introduced in the year 1988, after the gap of 14 years, on 16.05.2012, the petitioner had requested for the said waiver. Even though such a belated claim has been submitted by the petitioner, the same was considered and duly forwarded to the Government with recommendation of the Assistant Commissioner, Commercial Tax, Nethaji Road Assessment Circle, Madurai, through his proceeding dated 14.09.2012 and it was also informed to the petitioner that till the decision is taken by the Government, the said amount, which was sought to be waived, ie., the amount of Rs.15,02,847/-, can be paid by the petitioner and only after sanction of the order of the Government is received, it can be refunded or adjusted.

7. The waiver scheme introduced by the Government, since was not utilised by the petitioner in time and he has only made a belated application, it is for the Government to take a decision as to whether the said benefit of waiver has to be extended to the petitioner also at the length of these long years. Merely because, the petitioner has made a belated application in the year 2012 for availing the benefit of waiver including interest in the year 1988, the respondent Department cannot wait endlessly for years together without recovering the tax due payable by the petitioner. Therefore, the respondents herein has issued the

impugned order seeking the recovery of the said amount along with interest for a sum of Rs.15,95,639/- from the petitioner, as the property of the petitioner has already been attached under Revenue Recovery Act. Therefore, the learned Additional Government Pleader would submit that there is absolutely no legal infirmity attached with the impugned order and hence, the same is sustainable one.

8. This Court has considered the said rival submissions made by both sides.

9. It is an admitted fact that the waiver scheme was introduced by the Government in the year 1995, whereby, under G.O.Ms.No.216 dated 11.07.1995, surcharge, additional surcharge and additional sales tax for the assessment year 1992-93 in respect of the Flour Mills had been waived. Since the petitioner is one of the Flour Mill, such waiver benefit extended by the Government had to be availed by the petitioner. However, the petitioner had not applied in time to get the waiver scheme in its favour and only after 14 years, as rightly pointed out by the learned Additional Government Pleader, an application has been made by the petitioner only on 16.05.2012. Since the decision for extending the benefit of waiver to be given to the petitioner has to be taken only by the Government, the said proposals submitted by the petitioner, though belatedly, was recommended and forwarded by the Commercial Tax Officer concerned to the Government.

10. Since the said application on the part of the petitioner to seek waiver of the tax amount for the year 1992-93 has been recommended and forwarded by the Assistant Commercial Tax officer concerned and who also in his order dated 14.09.2012 has specifically stated that the said amount of Rs.15,02,847/- should be made only after the sanction order of the Government on finding the eligibility conditions, the very same amount along with interest cannot now sought to be recovered from the petitioner and this is what exactly been done by the respondent herein through the impugned order.

11. Whether the petitioner is eligible to get the benefit of waiver or not has to be decided by the Government and even though the said proposal was forwarded by the Assistant Commissioner, Commercial Taxes Department concerned in September 2012, till date, no decision has been taken by the Government. Because the Government is keeping the file with them without taking any decision, that would not give any leverage to the respondent to recover the amount from the petitioner, because once the amount is recovered from the petitioner, then the question of extending the benefit of waiver to the petitioner would not arise at all. Therefore, the present impugned order, if it is given effect to, that will make the claim of the petitioner infructuous.

12. Therefore, on consideration of these factors and the circumstances, this Court is of the considered view that the impugned order herein need not be given effect to till a decision

is taken by the Government on the application of the petitioner dated 16.05.2012 as recommended by the Assistant Commercial Tax Officer concerned.

13. In the result, the following orders are passed in this writ petition:

(i) The State Government represented by the Secretary to Government, Commercial Taxes Department, shall take a decision on the application of the petitioner dated 16.05.2012 as recommended and forwarded by the Assistant Commercial Tax, Nethaji Road Assessment Circle, Madurai through their letter dated 14.09.2012 to avail the waiver Scheme waiving the surcharge, additional surcharge and additional sales tax for the assessment year 1992-93 for the petitioner, who is the Flour Mill as per G.O.Ms.No.216 dated 11.07.1995 and such a decision shall be taken by the Secretary to Government, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) Till such a decision is taken and communicated by the Secretary to Government as directed above, the impugned order herein issued by the respondent shall be kept in abeyance and it shall not be given effect to.

(iii) It is needless to mention that once a decision is taken by the Government as directed above, it is open to the respondent herein to act upon in accordance with the said decision.

14. With these observations and directinos, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Commercial Taxes Department, Fort.St.George, Chennai.
2. The Assistant Commissioner,
   Commercial Tax Department, Thirumangalam Assistant Circle,
   Thirumangalam, Madurai District

+1 CC to M/s.B.SARAVANAN, Advocate, SR No. 11336.
+1 CC to THE SPECIAL GOVENRMENT PLEADER, SR No. 11141.

RR
PSM/MR-KKR/SAR2/12.07.2017/5P/5C

W.P.(MD)No.15440 of 2013
27.02.2017