IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23591 of 2007
and
MP.No.2 of 2007

M/s.Vijay Plasfabs Pvt. Limited
represented by its Director
R.Thiagarajan ... Petitioner

Vs.

1.The Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri.

2.The Assistant Commissioner of
Commercial Taxes,
Commercial Taxes Building,
Collectorate Campus,
Kancheepuram.

3.Chettinad Cement Corporation Limited
Rani Seethai Hall Buildings,
603, Anna Salai,
Chennai- 600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for and quash the impugned proceedings of the first respondent in Rc.No.900/A3/2002 dated 04.07.2007 issued as per the provisions of the Section 26 of the TNGST Act 1959 to the third respondent herein as the same is without jurisdiction.

For Petitioner : Mr.A.R.Jeyasanker

For R1 & R2 : Mr.M.Hariharan, AGP

ORDER

Challenging the notice in Form B6 dated 04.07.2007, issued by the first respondent, the petitioner has come up with this writ petition.

2.Briefly stated facts of the case are as follows:

2.1 The petitioner is engaged in the business of manufacturing HDPE/PP Woven Sacks and a registered dealer on the file of the first respondent.

2.2 The Government, by notification in G.O.Ms.No.500 dated 14.05.1990, introduced the Interest Free Sales Tax Loan Scheme, with a view to encourage all the new industries and expansion of the existing industries in the backward and most backward areas of the State, as per which, the deferral of sales tax will be given for nine years to the full extent of the total investment of fixed assets. Subsequently, the Government issued another notification No.48 dated 11.02.1994, treating the sales tax deferral as deemded to have been paid as Interest Free Sales Tax Loan repayable to the Government by the assessee in specified instalments as prescribed in the Elibility Certificate.

2.3 The petitioner started a small scale industry in the year 1992 for manufacture of HDPE/PP Woven Sacks and applied for Eligibility Certificate for setting up their new unit and expansion of the existing unit. They were issued with Elibility Certificates on 04.09.1992, 04.02.1993, 20.04.1994 and 16.05.1995 and they were eligible to avail loan for the periods from 1992-93 to 2000-2001, 1993-94 to 2002-03 and 1995-96 to 2003-04 and they have to repay the loan availed from 2001-02 to 2009-10, 2002-03 to 2011-12 and 2004-05 to 2012-13 respectively. Subsequently, they entered into agreements on 11.02.1994, 08.01.1996 and 22.03.1995 with the second respondent and availed the Interest Free Sales Tax Loan.

2.4 Whileso, due to a campaign against the use of plastic and its materials, the petitioner was unable to market their products and incurred heavy loss from the financial year 2001-02 onwards, which ultimately resulted in closure of the industry.

2.5 In the year 2006, with great difficulty, the petitioner restarted its business. At that time, they were informed by the third respondent about the notice in Form B6 dated 25.05.2007 issued by the first respondent, calling upon the third respondent to make payment from the credit of the petitioner. Since there was an error in the said notice, a fresh notice dated 04.07.2007 came to be issued, directing the third respondent to withhold the payment due to the petitioner and also pay Rs.1,26,75,046/- to the first respondent. Since the first respondent initiated recovery proceedings, without issuing a copy of the same to the petitioner, the present writ petition came to be filed.

3.The main ground of attack made by the petitioner is that if there is any default in payment of loan instalments, in terms of the agreements entered into between the petitioner and the second respondent, only the second respondent has power to initiate recovery proceedings and hence, the impugned notice issued by the first respondent under Section 26 of the TNGST Act is arbitrary, illegal and contrary to law.

4.Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that since the petitioner failed to pay the loan instalments, as agreed by them, the first respondent issued Form B6 notice to the garnishee, which is perfectly in accordance with the terms of the agreements entered into between the parties. Hence, no interference is required to the notice impugned herein.

5.Heard both sides and perused the records.

6.This Court, while admitting this writ petition, granted an interim order of stay on condition to remit a sum of Rs.50 lakhs to the respondents 1 and 2, which, according to the learned counsel for the petitioner, has duly complied with.

7.Admittedly, the petitioner availed deferral facility under the Interest Free Sales Tax Loan Scheme and entered into agreements with the second respondent. However, they failed to pay the loan instalments due to financial constraints faced by them. As a result of the same, the first respondent issued Form B6 notice to the third respondent/Garnishee, which is impugned herein.

8.The petitioner questioned the impugned notice on the ground of jurisdiction of the first respondent to issue the same to the third respondent. However, the learned counsel for the petitioner is unable to point out anything denying the liability of the petitioner to pay the loan instalments or illegality committed by the first respondent in initiating the recovery proceedings, whereas the learned Additional Government Pleader appearing for the respondents 1 and 2 drew the attention of this Court to the default clauses (3) and (8) made in the agreements entered into between the parties, at the time of availing interest free sales tax loan, which reads as follows:

"3...in case of default in payment of Government loan, the party of the second part undertakes that -

THE MOVABLE AND IMMOVABLE PROPERTIES OF THE COMPANY.

Shall be liable to be attached/proceeded towards the realisation of outstanding Government Loan under Revenue Recovery Act together with interest at 24% per annum. (Simple Interest) calculated from the due date for repayment of loan, the term movable shall include cash/shares/debentures/bank balance etc."

"8.In case of default of any of the conditions mentioned in paras 3, 4, 5, 6 and 7 above, the deferral thus granted shall be cancelled for the entire period for which the same was granted.

In default of repayment of Government Loan or cancellation of the deferral facility for violation of any of the conditions as mentioned in paras 3, 4, 5, 6 and 7, such Government Loan, tax and interest due there on, shall be recoverable in such manner as specified under revenue recovery Act for the loan and section 24(2) of the TNGST Act for the tax and the amount is also liable for 24% interest per annum."

9.From the aforesaid clauses, it is very clear that in the event of the petitioner's failure to repay the loan, the same shall be recovered under the Revenue Recovery Act for the loan and under Section 24(2) of the TNGST Act for the tax, besides payment of interest at 24% per annum for the same.

As such, the petitioner is liable to make payment along with interest, to the respondent authority.

10.In such view of the matter, this writ petition deserves to be dismissed and is accordingly, dismissed. It is open to the respondent authority to recover the dues from the petitioner as per law. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri.

2.The Assistant Commissioner of
Commercial Taxes,
Commercial Taxes Building,
Collectorate Campus, Kancheepuram.

+1cc to Special Government Pleader (Taxes) SR.No.84686,81476

WP.No.23591 of 2007

VD(CO)
GMY(10/04/2019)