IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.12.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17665 of 2005
and
W.P.M.P.No.19185 of 2005

M/s.Varalakshmi Chemind Pvt Ltd.,
represented by its Managing Director,
T.Panneer Selvam
Serkadu
Vellore - 632 106. ..Petitioner

vs

1.The Deputy Commercial Tax Officer,
Gudiyattham East,
Vellore District.

2.The State of Tamil Nadu,
represented by its Secretary to Government,
Prohibition & Excise Department,
Fort St.George,
Chennai - 600 009.

3.The Commissioner of Prohibition
& Excise Department,
Ezhilagam
Chennai - 600 005. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to forbear the first respondent from bringing to auction the petitioner company till the compliance of the order of this Hon'ble Court dated 11.02.2003 in W.A.M.P.No.5385 of 2002 in W.A.No.203 of 1998 by the second and third respondents.

For Petitioner : Mr.N.Balaji
for M/s.Mogan Law Firm

For Respondents : Mr.M.Hariharan
Additional Government Pleader(Taxes)

O R D E R

The relief sought for in this writ petition is to forbear the first respondent from bringing to auction the petitioner company till the compliance of the order of this Hon'ble Court dated 11.02.2003 in W.A.M.P.No.5385 of 2002 in W.A.No.203 of 1998 by the second and third respondents.

2.The learned counsel for the writ petitioner states that the petitioner is a private limited company, registered on the file of the Registrar of companies, Chennai in No.9356 of 1982. The company is eligible to avail the benefit under the Deferral Scheme in respect of payment of tax. The learned counsel for the petitioner states that the tax under the Deferral Scheme is to be paid by the writ petitioner for the years 1992 to 1997. The said amount is to be paid with the department within a period of five years, commencing from the year 1997.

3.Admittedly, the said tax amount has not been paid by the writ petitioner to the department. The contention of the writ petitioner is that an interim order was granted in Writ Appeal No.203/1998 and therefore, the writ petitioner need not pay the amount during the relevant point of time. The Writ Appeal was filed, challenging the closure of the unit, wherein an interim order was granted to open the petitioner company and the said order had not been complied with by the competent authorities.

4.The learned Additional Government Pleader appearing on behalf of the respondents opposed the contention by stating that closure of the unit is unconnected with the payment of tax as per the Deferral Scheme and the benefits are extended to the writ petitioner company under the Deferral Scheme to pay the tax after the expiry of the period. Even the said benefit extended had not been availed by the writ petitioner and therefore, the prayer as such sought for cannot be granted. However, the learned Additional Government Pleader brought to the notice of this Court that the W.A.No.203 of 1998 had been dismissed by the Hon'ble Division Bench on 30.07.2010 itself.

5.This Court is of an opinion that the writ appeal filed in respect of the closure of the petitioner unit is unconnected with the tax payment with reference to the Deferral Scheme during the year 1997. The payment of tax under the Deferral Scheme is unconnected and it is independent.

6.This being the factum of the case, the writ petitioner is liable to pay the tax under the scheme as per the terms and conditions. Admittedly, the tax under the scheme is yet to be paid by the writ petitioner. Thus, the relief as such sought for to forbear the 1st respondent from bringing to auction the petitioner's company cannot be granted at all and the respondents are at liberty to proceed against the writ petitioner to recover the arrears of tax amount, if any by following the procedures as contemplated under law.

7.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Vellore District.

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Chennai - 600 009.

3.The Commissioner of Prohibition
& Excise Department,
Ezhilagam
Chennai - 600 005.

+1cc to Mr.McGan Law Firm, Advocate, S.R.No.84805
+1cc to the Government Pleader(Taxes), S.R.No.84690

W.P.No.17665 of 2005

EV(CO)

rrs 02/01/2019